Before the FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(202) 457-3090

Complainant,

v. **File No. EB-16-MD-001**

GREAT LAKES COMMUNICATION CORP.
1501 35th Avenue, W
Spencer, IA 51301
(712) 580-4700

Defendant.

GREAT LAKES COMMUNICATION CORP.'S ANSWER TO THE FORMAL COMPLAINT OF AT&T CORP.

Pursuant to 47 C.F.R. § 1.724, Defendant Great Lakes Communication Corp. ("Great Lakes" or "Defendant") answers the Formal Complaint of AT&T Corp. ("AT&T" or "Complainant"), paragraph by paragraph, as follows:

1. Great Lakes admits that AT&T is the Complainant in this matter and that it has brought the Formal Complaint to which this Answer responds; Great Lakes denies that AT&T is entitled to any relief under its Complaint for the reasons given in this Answer and its accompanying Legal Analysis and supporting papers.

2. Great Lakes admits that the United States District Court for the Northern District of Iowa ("District Court") issued the two orders cited by AT&T, but denies that the District Court referred to the Commission the counterclaims that the District Court dismissed in that March 3, 2015 order. For the reasons given in Great Lakes' January 11, 2016 letter submitted in

connection with this proceeding, those two issues were dismissed, not referred.[1] Great Lakes otherwise admits that the June 29, 2015 order referred three issues to the Commission pursuant to the primary jurisdiction doctrine.

3. Subject to the preservation of its claim that the issues arising out of the two AT&T counterclaims that were dismissed by the District Court's March 3, 2015 order were not referred to the Commission and should be addressed independently of the issues that the District Court did refer in its June 29, 2015 order, Great Lakes admits that the February 2, 2016 letter ruling directed AT&T to file a Formal Complaint addressing both the dismissed and referred issues that arose out of the District Court's March 3, 2015 and June 29, 2015 orders.

4. Great Lakes admits that AT&T alleges in Count I of its Formal Complaint that Great Lakes violated Section 201(b) of the Act by not providing AT&T with a direct connect service on AT&T's terms. Great Lakes denies that claim on both legal and factual grounds. As explained in greater detail in its accompanying Legal Analysis, Great Lakes has no duty to provide AT&T with a direct connect service generally, or at rates in CenturyLink's access tariff specifically.[2] To the contrary, Great Lakes' tariffed access service has at all times complied with the Commission's CLEC access charge benchmarking rule.[3] Never in the Commission's fifteen years of regulating CLEC access charges has the Commission held that 47 C.F.R. § 61.26(a)(i)'s definition of CLECs' regulated "switched exchange access services" includes direct-trunked transport service; to do so would plainly conflict with the transport service that *is* identified in that definition, namely, "*tandem switched* transport facility," as well as the Commission's long-standing holding that *indirect* connection satisfies a CLEC's (and other non-ILECs) duty to

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1 *See* AT&T Ex. 3, (January 11, 2016 Letter from G. David Carter to Christopher Killion, Chief, MDRD/EB/FCC).

2 Legal Analysis § I.

3 47 C.F.R. § 61.26.

interconnect under 47 C.F.R. § 251(a)(1). Because Great Lakes' conduct is clearly consistent with existing law, and AT&T is effectively asking the Commission to create new law in this referral proceeding (which it cannot do[4]), Great Lakes has not violated Section 201(b). AT&T knows that its Count I is predicated on a misrepresentation of the Commission's rules; its sole corporate declarant in this proceeding, Mr. Habiak, testified as follows even after AT&T began its revisionist attack on the Commission's CLEC access charge rules:

> Establishing a connection between two networks is expensive, and it requires time and the cooperation of *both* parties. **LECMI [a CLEC] has no obligation to establish a "direct" connection with AT&T Corp. or any other IXC, and no obligation to route traffic over such a connection if there were one. And obviously, LECMI has no incentive to establish a "direct" connection that results in much lower access revenues to itself** or cuts off its share of the Complainants' access revenues; to the contrary, **LECMI's natural self-interest creates an affirmative incentive *against* cooperation.**[5]

While irrelevant, Great Lakes admits that CenturyLink, an ILEC that must offer a direct connect service under 47 U.S.C. § 251(c) and 47 C.F.R. § 69.112, has tariffed such a service. Likewise irrelevant, Great Lakes further admits that its pre-dispute-period, pre-*Connect-America-Fund-Order* tariff included a direct connect service, which no carrier, including AT&T, had ever requested or purchased from Great Lakes in the seven years it was included in the tariff.[6] Factually, Great Lakes denies that it has "refus[ed] to provide a direct connection arrangement with AT&T." **[BEGIN CONFIDENTIAL]** [redacted]

[4] *See* Legal Analysis § I.B.

[5] **Exhibit 1**, Rebuttal Testimony of John W. Habiak, on behalf of AT&T Corp, in Michigan Public Service Commission Case No. U-17619, at 4-5 (Sept. 11, 2014) (emphasis added in bold).

[6] *See* Declaration of Josh Nelson ¶¶ 2-3 ("Nelson Decl.").

[redacted].[7] **[END CONFIDENTIAL]** Indeed, when Great Lakes attempted to accept AT&T's four-page, single-spaced offer for a direct connect on June 26, 2015, AT&T rejected Great Lakes' effort to accept that offer, claiming that its offer was incomplete and thus incapable of being accepted by Great Lakes.[8] With respect to AT&T's final supposition concerning what might have happened if "Great Lakes offered a direct connection on the same terms as CenturyLink," as explained in greater detail below, AT&T mischaracterizes its own position insofar as it wants *CenturyLink* to provide direct-trunked transport to Great Lakes' end office via facilities that AT&T has not even proven exist and are available to AT&T. Thus, AT&T has sought a different type of *indirect* connection to Great Lakes, on fictional facilities but at CenturyLink's lowest tariffed rates. Because AT&T has not established that CenturyLink actually has such facilities and would make them available to AT&T, AT&T's hypothetical reduction of charges is unsubstantiated conjecture, and Great Lakes denies it.[9]

5. Great Lakes admits that AT&T alleges in Count II of its Formal Complaint that Great Lakes has violated Sections 203(c) and 201(b) of the Act by billing for services that AT&T claims are contrary to the terms in Great Lakes' access tariff and the Commission's rules. Great Lakes denies that claim on legal and factual grounds. Like its tortured construction of 47 C.F.R. § 61.26, AT&T's claim is grounded in a purposeful mischaracterization of Great Lakes' financial relationship with its high-volume customers. Each of those customers entered into a "Telecommunications Service Agreement" with Great Lakes, under which Great Lakes provides them the telecommunications and ancillary services they need to provide their telecommunications-dependent conferencing and chat services to the public, in exchange for

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7 *Id.* at ¶ 16; **Exhibits 2-8**.

8 *See* **Exhibit 9**, M. Hunseder June 26, 2015 letter & email to D. Carter; *Great Lakes Commc'n Corp. v. AT&T Corp.*, 124 F. Supp. 3d 824, 839 (N.D. Iowa 2015).

9 *See* Declaration of Michael Starkey ¶¶ 5-18 ("Starkey Decl.").

which they have consistently been billed and paid Great Lakes a substantial monthly fee for the services Great Lakes provides them.[10] As such, they are end users under Great Lakes' tariff, and Great Lakes therefore properly invoiced AT&T for its access services. In addition to agreeing with its customers that they will pay Great Lakes a fee for the interstate telecommunications services Great Lakes provides them, Great Lakes reports to USAC and the FCC as end user telecommunications revenue in line 404.3 of its Form 499-As the revenue that it receives from the customers associated with the fee categories generally described on their invoices as **[BEGIN CONFIDENTIAL]** [redacted] [11] **[END CONFIDENTIAL]**

6. Great Lakes admits that AT&T alleges in Count III of its Formal Complaint that Great Lakes (and any other CLEC) may only recover for "interstate call termination services" from a long distance carrier either via a validly filed tariff or an express, negotiated contract with the IXC. Great Lakes denies that legal argument for the reasons given in its accompanying Legal Analysis. Great Lakes admits that the District Court dismissed its claims for unjust enrichment and *quantum meruit*, but further notes that the District Court Judge who then assumed jurisdiction over the case and referred these issues to the Commission "recognize[d] that referral of these issues to the FCC amounts to something of a collateral attack on the rulings [of the first Judge]… and that a determination of these issues by the FCC could invite reinstatement of [Great Lakes'] state-law claims in this case."[12] Great Lakes admits that the great majority of its access services are interstate in nature, but denies that, "as such," the "Commission has exclusive jurisdiction over those services, and the states lack jurisdiction," as AT&T claims. The

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10 **Exhibit 10**, Starkey Report at 6-8; Answer at ¶ 44; see also Legal Analysis § II.

11 AT&T Ex. 56 & Answer ¶ 48.

12 *Great Lakes Commc'n Corp. v. AT&T Corp.*, No. C 13-4117-MWB, 2015 WL 3948764, at *8 (N.D. Iowa June 29, 2015).

Commission has *never* preempted state law vis-à-vis CLECs' interstate access services. To the contrary, since the Commission began regulating CLEC access charges, it has consistently allowed CLECs to provide those services to IXCs pursuant to contract, a creature of state law, and was clear that its purpose in establishing those rules was to establish a "pro-competitive, deregulatory national policy framework."[13] AT&T's claim that the Commission somehow preempted state law by allowing CLECs to recover for access services pursuant to state-law modes of recovery under a "deregulatory national policy" is illogical and unreasonable on its face.[14] AT&T is merely trying to retain the **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of dollars of revenue it generated – from wholesale and retail customers alike – off of traffic that Great Lakes terminated for AT&T's benefit.[15]

7. Great Lakes admits that the Commission has jurisdiction over portions of AT&T's Formal Complaint under 47 U.S.C. § 208, but denies that the "First Referral Order," which dismissed AT&T's two counterclaims,[16] created any jurisdiction in the Commission. Great Lakes admits that, with respect to its tariffed access services at issue in this proceeding, it is a common carrier under the Act. As explained more fully in its legal brief, Great Lakes denies that, once it exercises forbearance to give CLECs the flexibility to collect for access services

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13 *In re Access Charge Reform of Access Charges Imposed by Competitive Local Exch. Carriers*, 16 FCC Rcd. 9923, ¶ 1 (2001) ("*Seventh Report & Order*").

14 *See, e.g., N. Valley Commc'ns, L.L.C. v. AT&T Corp.*, No. 1:14-CV-01018-RAL, 2015 WL 11675666, at *5 (D.S.D. Aug. 20, 2015) ("Thus, if Northern Valley's services are not access services, then they not only fall outside the tariff as AT&T claims, but also fall outside the scope of the FCC rule limiting the methods by which a CLEC may charge.").

15 *See* **Exhibit 16**, Fischer Rebuttal Report at Amended Ex. 4.

16 *See* AT&T Ex. 3, (January 11, 2016 Letter from G. David Carter to Christopher Killion, Chief, MDRD/EB/FCC); *Great Lakes Commc'n Corp. v. AT&T Corp.,* No. 13-CV-4117-DEO, 2015 WL 897976, at *6–7 (N.D. Iowa Mar. 3, 2015).

pursuant to state-law contracts, the Commission lacks jurisdiction to pick and choose which state law contract-based theories of recovery are available.[17]

8. As noted above, Great Lakes denies that the "First Referral Order" referred anything to the Commission, as evidenced by the District Court's only Referral Order (referred to by AT&T as the "Second Referral Order"), which clearly did refer certain identified issues to the Commission and stayed the case pending the Commission's resolution of those issues.[18]

9. Great Lakes admits that AT&T requests damages in connection with Counts I and II of its Formal Complaint, which Great Lakes denies it is entitled to because those claims fail as a matter of fact and law. Great Lakes also admits that AT&T has requested that any available damages to either party be addressed after the Commission's adjudication of the liability issues, a request to which Great Lakes does not object.

10. Great Lakes admits that the cited parts of AT&T's Formal Complaint were included, but denies that they establish that Great Lakes "has violated the Communications Act and the Commission's rules implementing the Act."

11. Admitted.

12. Particularly in light of the fact that AT&T rejected Great Lakes' unequivocal acceptance of AT&T's June 26, 2015 settlement offer (which included detailed pricing terms for the exchange of prospective traffic on a direct-connect basis),[19] and AT&T has not meaningfully responded to Great Lakes' settlement proposals this year, Great Lakes cannot adequately assess AT&T's claim that it attempted in good faith to discuss the possibility of settlement with Great

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[17] Legal Analysis § I.B.

[18] *Great Lakes Commc'n Corp. v. AT&T Corp.*, No. C 13-4117-MWB, 2015 WL 3948764, at *8 (N.D. Iowa June 29, 2015).

[19] *See* **Exhibit 9**, M. Hunseder June 26, 2015 letter & email to D. Carter; *Great Lakes Commc'n Corp. v. AT&T Corp.*, 124 F. Supp. 3d 824, 839 (N.D. Iowa 2015).

Lakes prior to filing its Formal Complaint, or whether it "remains open to settlement," and therefore denies that statement.

13. With the exception of AT&T's reference to the District Court's March 3, 2015 order as a "Referral Order," which Great Lakes denies for the reasons stated above, admitted.

14. Great Lakes admits that AT&T attached an information designation to its Formal Complaint.

15. Great Lakes admits the first sentence of this paragraph. Great Lakes denies that this case relates only to AT&T's role as a "purchaser of services, and not as a common carrier providing services." First, AT&T hasn't purchased – as in paid for – Great Lakes' access services since early 2012.[20] Second, AT&T's role as a carrier of the long distance calls Great Lakes has indisputably terminated for the benefit of AT&T and its customers' – retail and wholesale – is relevant to this proceeding.

16. Admitted.

17. Great Lakes admits only that its tariffed rates are correctly benchmarked against those of CenturyLink's applicable switched access rates in Iowa, and that AT&T hands the calls at issue off to INS, which in turn hands them off to Great Lakes for termination to its end user customers, including its high-volume customers. Beyond that, Great Lakes denies the relevance of either of those two carriers.

18. Admitted.

19. Great Lakes admits that it receives AT&T's calls at issue from INS, and that AT&T has also engaged in self-help withholding of INS's tariffed charges.[21]

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[20] Formal Compl. ¶ 51.

[21] *See* Formal Compl. ¶ 19 & n.34 (referring to the collection action INS has filed against AT&T).

20. Great Lakes admits only that it serves various customers who receive relatively high volumes of calls, some of which relate to conferencing or chat services; AT&T offers no evidence about the nature of the services Great Lakes' high-volume customers provide, and the cited stipulation does not speak to that or whether the services are offered for free, for a fee, some combination thereof, or any other terms of those services.[22] Consequently, AT&T offers no competent evidence for such claims and, for this reason, Great Lakes denies them.

21. Great Lakes admits that AT&T seeks the relief described in this paragraph, which Great Lakes denies that AT&T is entitled to.

22. Great Lakes denies the conclusory right to relief in this paragraph for the reasons given in this Answer and the accompanying supporting papers.

23. Great Lakes denies that AT&T's "Legal Analysis" is either a "Fact[] in support of the Formal Complaint" or accurate, and therefore incorporates its responsive Legal Analysis by reference here.

24. With the caveat that, by not being an ILEC, Great Lakes is a CLEC and actually and legally operates as such,[23] admitted.

25. Great Lakes denies the legal conclusion that it "partnered" with free conferencing and chat companies, insofar as AT&T suggests or implies that a partnership was created through Great Lakes' business relationships with the calling service providers, rather than a carrier-customer relationship. Great Lakes admits that it has engaged in access stimulation as the Commission has defined it,[24] and that it began serving local exchange service and internet customers with whom Great Lakes does not have a revenue-sharing agreement in approximately

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22 Stip. at ¶ 10.
23 *See* 47 C.F.R. § 61.26(a)(1).
24 47 C.F.R. § 61.33(b).

August 2012. While also irrelevant, the cited testimony does not support the proposition that Great Lakes' participation in the lawful practice of access stimulation was necessary to sustain its business operation in 2012 or at present, and therefore denies it.

26. Great Lakes admits only that, as of the date cited, it provided telecommunications and/or broadband internet service to the cited number of customers that AT&T would not characterize as a "Free Calling Party."

27. Great Lakes admits that the quoted language is found in the cited opinion issued by the IUB in 2009, which dealt with a time period, tariff, factual record, and jurisdiction that is irrelevant to the traffic at issue in this dispute. AT&T offers no evidentiary support for its characterization of that irrelevant IUB order, which speaks for itself, and therefore Great Lakes denies those unsubstantiated mischaracterizations. Great Lakes further denies AT&T's unsubstantiated claim that the IUB's findings as to it were "very similar" to the FCC's holding in the cited *Farmers & Merchants* line of cases, which involved materially different tariffs and factual records. Moreover, contrary to AT&T's unsubstantiated claim that the IUB has been "highly critical" of Great Lakes' business, after receiving Great Lakes' periodic reports detailing its development and implementation of its expanded services in its exchanges, the IUB issued an order in July 2016 terminating Great Lakes' duty to file such reports, and likewise rejected AT&T's request that the IUB revoke Great Lakes' certificate of public convenience and necessity.[25]

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[25] **Exhibit 11**, *In re Great Lakes Comm'cn Corp.,* Order Terminating Reporting Requirements, IUB Docket No. M-3798 (IUB, July 15, 2016); *see* AT&T Ex. 16, *In re Great Lakes Comm'cn Corp.*, Final Order, IUB Docket No. SPU-2011-0004 (IUB, March 30, 2012) (denying requests to revoke Great Lakes' certificate of public convenience and necessity, and directing Great Lakes to expand its service offerings within specified time periods); *see also* Nelson Decl. ¶¶ 4-13; http://www.spencerdailyreporter.com/story/2186325.html ("IGL TeleConnect to serve Webb Wireless customers" (April 16, 2015));

28. While irrelevant, Great Lakes admits that the quoted language is found in the cited opinion issued by the IUB in 2009, a time period, tariff, factual record, and jurisdiction not at issue in this dispute. AT&T offers no evidentiary support for its characterization of that irrelevant IUB order, which speaks for itself, and therefore Great Lakes denies those unsubstantiated mischaracterizations. Great Lakes further denies the application of the IUB's conclusions regarding the reasonableness of rates to this dispute, as the FCC has expressly concluded that sharing access revenues does not make a CLEC's interstate rates unjust or unreasonable,[26] and the FCC has preempted state control over the rates for intrastate access, such that the IUB's 2009 discussion of what it believed to constitute reasonable access rates has been nullified.[27] Great Lakes disputes AT&T's characterization that its access charges are "too high" when the charges are established pursuant to FCC policy, which is materially different from the IUB's policy on access stimulation, a policy that the Commission considered and refused to follow.[28]

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http://www.spencerdailyreporter.com/story/2111666.html (Gov. Branstad welcomes data center, Spencer Daily Reporter, August 21, 2014); http://www.spencerdailyreporter.com/story/2163408.html (Nelson seeks to better the Corridor, Spencer Daily Reporter, February 4, 2015); http://www.dickinsoncountynews.com/story/2143117.html (Corridor businesses recognized at business recognition luncheon, Spencer Daily Reporter, December 2, 2014); http://www.spencerdailyreporter.com/story/2338045.html (IGL TeleConnect expands into Everly area, Spencer Daily Reporter, September 9, 2016).

[26] *See In re Connect America Fund Order,* 26 FCC Rcd. 17663, 17890, ¶ 701 (2011) ("*Connect America Fund Order*") (establishing that, notwithstanding revenue-sharing agreements between LECs and their end user customers, LECs' tariffed access rates at the new level prescribed in 47 C.F.R. § 61.26(g) would be presumptively just and reasonable).

[27] *See, e.g., id.* ¶¶ 764-65; 790-96, 801 (superseding state regulation of intrastate access charges in favor of the Commission's 251(b)(5) framework).

[28] *See id*. ¶¶ 692-94 (rejecting AT&T's request to detariff CLEC access charges if they engage in access stimulation, rejecting other proposals to allow for high volume access tariffs or cost-based rates, and further noting that "we believe it is more appropriate to retain the benchmarking rule but revise it to ensure that the competitive LEC benchmarks to the price cap LEC with the lowest rate in the state"); *cf. In re High Volume Access Service,* Order Adopting

29. Great Lakes admits that the quoted language is found in the cited opinion issued by the IUB in 2012, which dealt with a time period, tariff, factual record, and jurisdiction that is irrelevant to the traffic at issue in this dispute. AT&T offers no evidentiary support for its characterization of that irrelevant IUB order, which speaks for itself, and therefore Great Lakes denies those unsubstantiated mischaracterizations.

30. Great Lakes admits that the quoted language is found in the cited opinion issued by the IUB in 2012, which dealt with a time period, tariff, factual record, and jurisdiction that is irrelevant to the traffic at issue in this dispute. AT&T offers no evidentiary support for its characterization of that irrelevant IUB order, which speaks for itself, and therefore Great Lakes denies those unsubstantiated mischaracterizations.

31. While irrelevant to the traffic at issue in this proceeding, Great Lakes admits that it filed its first switched access tariff with the FCC in 2005, which was replaced with the tariff at issue in this case.[29] Other than citing to Great Lakes' 2005 tariff and CenturyLink FCC Tariff No. 11, both of which are hundreds and hundreds of pages in length, AT&T offers no evidentiary support for its sweeping, categorical statement that the two tariffs "were generally consistent," and therefore Great Lakes denies that unsubstantiated claim; the two irrelevant tariffs speak for

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Rules, IUB Docket No. RMU-2009-0009 (IUB, June 7, 2010); 199 IAC 22.14(2)(e) (effectively detariffing access stimulating LECs' access services by establishing new "High Volume Access Service" rules that require such LECs to negotiate with and receive the consent of all IXCs it has billed access charges to in the preceding twelve months to tariff the negotiated rate, which the IXCs invariably refuse to do, prompting the LEC to either forego those intrastate access charges or initiate a formal complaint with the IUB, in response to which the IUB could set an incremental-cost-based access rate).

[29] Stip. at ¶ 4.

themselves. Great Lakes admits that Qwest is now called CenturyLink and that CenturyLink is the lowest price cap ILEC in Iowa.[30]

32. Great Lakes admits only that the quoted language appears in the two cited irrelevant tariffs, which speak for themselves.

33. Great Lakes admits only that the quoted language appears in the two cited irrelevant tariffs, which speak for themselves.

34. Great Lakes admits only that the quoted language appears in the two cited irrelevant tariffs, which speak for themselves.

35. Great Lakes admits that, in compliance with the Commission's *Connect America Fund Order* and 47 C.F.R. § 61.26(g), it filed its deemed lawful tariff, Tariff F.C.C. No. 2 ("Tariff") in January 2012. Its Tariff speaks for itself, and therefore Great Lakes denies AT&T's characterization of it.

36. Great Lakes admits only that the quoted language appears in its Tariff, which speaks for itself. Its Tariff speaks for itself, and therefore Great Lakes denies AT&T's characterization of it.

37. Great Lakes admits only that the quoted language appears in its Tariff, which speaks for itself. Its Tariff speaks for itself, and therefore Great Lakes denies AT&T's characterization of it.

38. Great Lakes admits only that the quoted language appears in its Tariff, which speaks for itself. Its Tariff speaks for itself, and therefore Great Lakes denies AT&T's characterization of it.

[30] Great Lakes admits that its original tariffed rates were benchmarked to the applicable NECA rates. *See* Answer at ¶ 55.

39. Great Lakes admits only that the quoted language appears in its Tariff, which speaks for itself. Its Tariff speaks for itself, and therefore Great Lakes denies AT&T's characterization of it. Great Lakes further denies that AT&T has accurately characterized Mr. Nelson's testimony; he merely agreed that the Tariff speaks for itself, including the clause that provides that an "end user must pay a fee to the Company for telecommunications service."[31]

40. Admitted.

41. Great Lakes admits that it provides telecommunications services to its conferencing customers pursuant to its Telecommunications Service Agreement with them and compensates them for their marketing services pursuant to its Marketing Agreements with them. The two agreements are legally distinct, but Great Lakes admits that both agreements are necessary to fully understand the relationship between Great Lakes and its customers that provide conference calling and chat services. AT&T offers no support for the unsubstantiated claim that the two distinct contracts **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** and Great Lakes therefore denies that unsubstantiated legal conclusion. **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** AT&T has not pointed to any record evidence regarding the negotiation or revisions of the agreements with respect to any other conferencing customer, and Great Lakes therefore denies the balance of the statement as unsubstantiated.

[31] AT&T Ex. 6, Nelson Dep. at 28:12-16.

42. Great Lakes admits that the marketing agreements are revenue-sharing agreements as defined by 47 C.F.R. § 61.3(bbb). Great Lakes further admits that the factual representation regarding the percentage of revenue share is accurate for the time period referenced in this paragraph. Great Lakes denies AT&T's mischaracterization of the *Connect America Fund Order* in footnote 91; the quoted language does not support the counterfactual proposition that AT&T offers it for. As this case illustrates, AT&T engages in self-help and does not pay charges associated with this traffic, such that there are no costs to pass on.[32] In any case, AT&T has produced no evidence that it has raised its rates (whether retail or wholesale) as a result of this traffic, and AT&T bears the burden to produce such data if it is true, which it has refused and failed to do. Great Lakes admits that the revenue-sharing payments referenced in this paragraph exclude the amounts that AT&T has unlawfully withheld, but it denies the unsubstantiated statement that **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** AT&T offers no support for that statement, which fails to contemplate the significant expense Great Lakes has been forced to incur over the past 3 years it has sought to recover its unpaid charges from AT&T, and thus Great Lakes denies it.

43. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

[32] Formal Compl. ¶ 51 (AT&T engages in self-help "almost immediately" vis-à-vis Great Lakes' charges); Formal Compl. ¶ 19 n.34 (AT&T engages in self-help with respect to INS' charges too).

[redacted][34] **[END HIGHLY CONFIDENTIAL]** Great Lakes *had* to provide its customers with telecommunications services in order to complete the several billion minutes of telephone calls AT&T admits Great Lakes completed for it.[35]

44. Great Lakes admits only that it consistently billed and collected the fees that its customers agreed to pay for the telecommunications and ancillary services that Great Lakes provided them under their respective Telecommunications Service Agreements, the monthly fees for which are reflected in Exhibit A to the customers' Agreements. Great Lakes denies AT&T's mischaracterization of the Agreements that the fees were paid **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** The Agreements speak for themselves, and therefore Great Lakes denies that allegation. Great Lakes admits **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

33 *See, e.g.,* AT&T Ex. 47 at Ex. A, pp. 9-10.
34 **Exhibit 12**, Nelson Dep. at 50; *see, e.g.,* AT&T Ex. 47 at pp. 1-5.
35 AT&T Ex. 13, Toof Report at Ex. DIT-8.

[redacted] **[END HIGHLY CONFIDENTIAL]** The cited deposition testimony only refers to AT&T's counsel's rhetoric, which the witness did not endorse. Great Lakes therefore denies that statement. Great Lakes admits that its customers are entitled to port their telephone numbers consistent with the FCC's rules and industry practice and guidelines, which speak for themselves. The cited deposition testimony does not support the proposition that the **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

45. Great Lakes admits only that the features set forth in this paragraph are among the features of comprehensive high-capacity telecommunications service that it provides to all of its conferencing customers, and that charges with that descriptor were included on the referenced customers' invoices.[36] AT&T offers no evidence to support (because the integrated high-capacity telecommunications services Great Lakes provides all of its customers is substantially the same),[37] and thus Great Lakes denies, the suggestion that Great Lakes provided these customers "an additional service."[38] Great Lakes admits that the quoted language appears on those bates-stamped pages, which speak for themselves and cannot be read in isolation, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

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36 *See, e.g.,* AT&T Ex. 6, Nelson Dep. 54:1-3.

37 Nelson Decl. ¶ 22.

38 *See, e.g.,* AT&T Ex. 6, Nelson Dep. 60:6-22; AT&T Ex. 7, Beneke Dep. 15:4-16:13.

[redacted][39] **[END HIGHLY CONFIDENTIAL]**

46. Great Lakes denies this paragraph insofar as it misrepresents the cited deposition testimony, which speaks for itself, and denies that it has only billed for the specific services listed on Exhibit A to the customers' Telecommunications Service Agreements, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted][40] **[END HIGHLY CONFIDENTIAL]** The Commission has made clear that it does not regulate the manner in which a CLEC provides services to its end user customers and does not require CLEC end users to procure a specific service to be properly considered an "end user," so long as they are offered a telecommunications service for a fee, which is indisputably the case here.[41]

47. While irrelevant, Great Lakes states that the Iowa tax code speaks for itself, and therefore denies AT&T's characterization of that irrelevant state law. Great Lakes denies the legal conclusion that taxes were "owed" on the services it has provided to its conferencing customers, or that any failure of Great Lakes to pay an intrastate sales and use tax has any bearing on AT&T's liability under Great Lakes' deemed lawful FCC switched access tariff; AT&T has failed to prove this legal conclusion.[42] There are various exemptions and exclusions to the Iowa tax, including for "fees and charges for securing only interstate telecommunication

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39 *See, e.g.,* AT&T Ex. 47 at ¶ 4, pp. 2-3.

40 AT&T Ex. 7, Beneke Dep. 13:14-15:13.

41 *Seventh Report & Order*, 16 FCC Rcd. at 9938, ¶ 39. ("we continue to abstain entirely from regulating the market in which end-user customers purchase access service."); *see also* **Exhibit 13**, Toof Tr. 191:3-21; **Exhibit 14**, Starkey Rebuttal Report, 7-15.

42 *See also id.* at 15-17.

services" and for resale services.[43] **[BEGIN CONFIDENTIAL]** [redacted]

[redacted]

[END CONFIDENTIAL]

48. Great Lakes admits that the four quoted words in the first sentence of this paragraph appear in the Form 499-A, and that the information reported on the 499-A is used by the Commission for various reasons, including Universal Service Fund contributions. Great Lakes denies the legal conclusions asserted in this paragraph; Great Lakes properly reports its applicable revenues to the FCC (and USAC) on its Form 499s. Specifically, Great Lakes admits that it reports to USAC and the FCC the revenue that it receives from its conferencing customers associated with the fee categories generally described on their invoices as **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** Great Lakes therefore properly reports its revenue data to the Commission and USAC consistent with Commission precedent.[44]

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[43] *See* Iowa Admin. Code, Revenue, Ch. 224, Telecommunications Services, §§ 701-224(3)(1)(c); 701-224.4(4)(a); 701-224.4(9).

[44] *See In re Universal Serv. Contribution Methodology,* 28 FCC Rcd. 16037, 16041-43, ¶¶ 10-13 (Nov. 25, 2013) (rejecting USAC's position that certain CLECs should have apportioned some of their end user revenue to the interstate revenue category on their 499s when the LECs did not denominate and book it as specifically "interstate" but rather charged a flat fee for the telecommunications services, and holding that "unless a CLEC chooses to recover the non-traffic-sensitive costs of providing interstate or interstate exchange access service from their end-user customers, and records such revenue as such in its supporting books and records, there is no obligation to report those revenues in the interstate jurisdiction as a SLC.").

49. While irrelevant to the traffic at issue here, Great Lakes admits that it first began billing AT&T when it began providing access services in late 2005 to 2006, that its traffic volumes received from AT&T increased after Great Lakes began operations, and that AT&T sued it in 2007 to avoid paying Great Lakes' tariffed charges.

50. Great Lakes admits that it and AT&T have **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

51. Great Lakes admits only that, after paying Great Lakes' March 1, 2012 invoice, AT&T sent Great Lakes the May 2, 2012 email included as Exhibit 60 to AT&T's Formal Complaint, in which AT&T disputed Great Lakes' April 1, 2012 invoice for the reasons stated in that email, which clearly do not relate to whether Great Lakes' new tariff properly implemented the requirements of the *Connect America Order*. Thus, Great Lakes denies that AT&T's dispute was "immediate" or that it had any connection to the *Connect America Order*, and further denies that AT&T complied with Great Lakes' deemed lawful tariff-dispute provision.[45] Great Lakes further denies that AT&T has not assented to Great Lakes' continued provision of access services, and denies that Mr. Starkey's testimony supports this misstatement by AT&T. Indeed, in his expert report, Mr. Starkey explained how **[BEGIN CONFIDENTIAL]** [redacted]

[45] *See Connect America Fund Order* at ¶ 700 ("As the Commission has previously stated, '[w]e do not endorse such [self-help] withholding of payment outside the context of any applicable tariffed dispute resolution provisions.'") (citation omitted); *see also* **Exhibit 15**, ATT000731-33 (July 12, 2012 letter from AT&T to Great Lakes, again making no mention of a direct connection or any challenge to Great Lakes' rates as tariffed).

[redacted][46] **[END CONFIDENTIAL]**

AT&T's voluntary acceptance of Great Lakes-bound traffic on the voluntary, private wholesale market further shows that AT&T has assented to the necessary access services that Great Lakes provides AT&T so that it can market and sell that wholesale service in the first place.[47]

52. Great Lakes denies that the evidence AT&T cites supports the sweeping, generic proposition about what unidentified "carriers" do "in many cases" because direct-connect pricing is purportedly "usually" lower than the per-minute pricing contemplated in 47 C.F.R. § 61.26. Mr. Habiak's testimony is not credible for at least two reasons. Even though AT&T had been exchanging far more traffic than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** minutes or more per month with Great Lakes for many, many years, he never explains why AT&T waited approximately six years to approach Great Lakes about a direct connect. Second, Mr. Habiak's cited declaration speaks to when "AT&T typically considers implementing a direct connection arrangement," but the generic representation in this paragraph relates to when such arrangements are actually "implement[ed]." But as Mr. Habiak has himself testified elsewhere, direct connections with CLECs are not routine because CLECs have neither an obligation nor an incentive to provide such a service to IXCs:

> Establishing a connection between two networks is expensive, and it requires time and the cooperation of *both* parties. **LECMI [a CLEC] has no obligation to establish a "direct" connection with AT&T Corp. or any other IXC, and no obligation to route traffic over such a connection if there were one. And obviously, LECMI has no incentive to establish a "direct" connection that results in much lower access revenues to itself** or cuts off its share of the Complainants' access revenues; to the contrary, **LECMI's natural self-interest creates an affirmative incentive *against* cooperation.**[48]

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46 AT&T Ex. 42, Starkey Report at 14.

47 *See* **Exhibit 16**, Fischer Rebuttal Report, 12-13 & Amended Ex. 4, 19-22.

48 **Exhibit 1**, Rebuttal Testimony of John W. Habiak, on behalf of AT&T Corp., in Michigan Public Service Commission Case No. U-17619, at 4-5 (Sept. 11, 2014) (emphasis added in bold); *see also* **Exhibit 17**, ATT0002022-25 (Excerpt of J. Habiak testimony before the Michigan Public Service Commission, Sept. 23, 2014) ("LECMI is a CLEC, and they do not

Moreover, the cited paragraphs from Dr. Toof's report offer no evidence or analysis and are devoid of any expertise.[49] Finally, AT&T mischaracterizes the quoted deposition testimony and rebuttal report of Mr. Starkey, which merely allowed for the possibility of a situation in which direct-connect costs "can be cheaper to the IXC," and at no point suggested that the possibility applied to "those [rates] assessed by GLCC and INS."[50] Thus, Great Lakes denies the statements in this paragraph because AT&T has offered no evidence to support it.

53. With respect to the first sentence of this paragraph, Great Lakes admits that CenturyLink is the price cap ILEC with the lowest access rate in Iowa (as "rate" is defined in 47 C.F.R. § 61.26(a)(5)); the remaining allegations in this sentence are argument and hyperbole that Great Lakes denies. Great Lakes admits the second sentence in this paragraph. With respect to the third sentence in this paragraph, Great Lakes admits only that the data in Exhibit F to Mr. Starkey's report, including the data showing that CenturyLink's total access minutes of use averaged across 2012 and 2013 exceeded **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** speaks for itself.[51] With respect to the fourth sentence in this paragraph, Great Lakes denies these statements. The volume of traffic is irrelevant except insofar as it relates to calculating the invoices with respect to MOU-sensitive charges. The volume of traffic that Great Lakes terminates for AT&T each month varies and is reflected on the applicable monthly invoices. Exhibit 8 to Dr. Toof's Report reflects monthly volumes from January 2012 to July 2014; only six of those approximately thirty months involved greater than

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have an obligation to direct connect… "for a CLEC, it's either through a tandem or through direct connect. It's not mandatory one way or the other.").

[49] *See* Great Lakes' Motion to Exclude Testimony of AT&T's Expert Witness, David I. Toof, Ph.D. filed concurrently herewith.

[50] AT&T Ex. 18, Starkey Dep. at 120:7-21; AT&T Ex. 61 at 5.

[51] AT&T Ex. 61, Starkey Report at Ex. F.

[BEGIN CONFIDENTIAL] [redacted][52] **[END CONFIDENTIAL]** The cited excerpt of Mr. Starkey's deposition in AT&T Exhibit 18 has no connection to the allegations in this sentence, and thus cannot rationally support this proposition. Finally, Dr. Toof, who has no expertise in this respect, merely recites that **[BEGIN CONFIDENTIAL]** [redacted][53] **[END CONFIDENTIAL]** Dr. Toof provides no factual basis whatsoever for his understanding, and thus Great Lakes denies this unsubstantiated statement, which AT&T should have been able to substantiate with its own data.

54. Great Lakes denies that the cited CenturyLink, Inc. SEC 10-K supports AT&T's allegation vis-à-vis CenturyLink's operations in Iowa; the SEC filing is submitted by the publicly traded parent entity, CenturyLink, Inc., not the subsidiary that provides access services in Iowa.[54] Iowa is only mentioned once in the cited excerpts, merely to note that Iowa is one of

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52 AT&T Ex. 13, Toof Report at Ex. DIT-8.

53 AT&T Ex. 13, Toof Report at ¶ 88.

54 AT&T's attempt to assess the reasonableness of Great Lakes' access charges by comparing them to CenturyLink's costs of providing access service, in Iowa or anywhere else, is improper as a matter of law. AT&T's ILEC-focused approach violates the Commission's repeated findings that a CLEC's costs of service are irrelevant to the reasonableness of their access charges, not least because it is antithetical to the Commission's deregulatory, market-based approach to CLEC access charges, and because to make such cost comparisons would perversely encourage CLECs to invest in old, expensive, inefficient ILEC network technology, a terrible policy choice from any reasonable perspective. *See, e.g.*, *Sprint Commc'ns Co. v. MGC Commc'ns, Inc.,* 15 FCC Rcd. 14027, 14029–30, ¶ 6 (2000) ("Relying, as it does, solely on the competing ILEC rate as a benchmark for what is just and reasonable, Sprint has failed to meet its burden in this action. We decline Sprint's invitation to hold that any access rate that is higher than the ILEC's is necessarily unjust and unreasonable under section 201(b). Nothing in the Commission's existing rules or orders supports Sprint's legal position. In particular, Sprint's reliance on our access charge reform order is misplaced. There, we noted only that CLEC terminating access rates higher than the competing ILEC rates 'may suggest' that the CLEC rates are excessive; in no way did we announce a *per se* rule of the sort for which Sprint now contends. As a CLEC, MGC is not subject to our part 69 access-charge rules, nor is it required to

37 states in which it is an incumbent carrier, which Great Lakes does not dispute. Great Lakes further denies that the cited excerpts establish that CenturyLink "promotes and offers its services to a broad array of businesses and residences," which is wholly irrelevant to the traffic at issue. In any event, while the Commission's access charge rules do not have a marketing-competition component, Great Lakes likewise promotes and offers its network services to a broad array of

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file tariffs under part 61 of our rules. Indeed, to the extent a review of the reasonableness of a CLEC's rates depends on a carrier-specific review of the costs of providing service, it is impossible to be categorical on this point since a CLEC's costs may not be comparable to those of an ILEC. None of the rate-making decisions that Sprint cites is to the contrary."); *AT&T Corp. v. Bus. Telecom, Inc.*, Mem. Op. & Order, 16 FCC Rcd. 12312, 12321-23, ¶¶ 17-22 (2001) (noting that examination of a CLEC's costs as the touchstone of rate-setting would be contradictory to the FCC's "reliance on market factors to dictate the appropriate rates" of CLECs); *Id.* at ¶¶ 18-19 ("First, the Commission has interpreted the Telecommunications Act of 1996 as directing the Commission to refrain - whenever possible - from applying to CLECs the legacy, cost-based regulations long applicable to the access services of ILECs. For example, the Commission has found that, in light of the 1996 Act, '[c]ompetitive markets are superior mechanisms for protecting consumers' by ensuring that services are provided and priced in the most efficient possible manner. The Commission also has determined that reliance on competitive market forces 'minimize[s] the potential that regulation will create and maintain distortions in the investment decisions of competitors as they enter local communications markets.' As a result, the Commission has concluded that the policies and purposes of the 1996 Act demand a 'market-based approach' to the regulation of access charges. Consequently, the Commission has chosen not to apply the historical ILEC rules and regulations to CLECs. Examining BTI's costs as the touchstone of the reasonableness of BTI's rates would contradict this trend towards reliance on market factors to dictate appropriate rates. Second, given the Commission's decision not to apply to CLECs the accounting and separations rules applicable to ILECs, there would be substantial 'legal and practical difficulties involved with comparing CLEC rates to any objective [*i.e.*, cost-based] standard of reasonableness.' Moreover, precedent exists for examining the reasonableness of rates by means other than reviewing the costs of an individual CLEC."); *In re Access Charge Reform*, Eighth Report & Order, 19 FCC Rcd. 9108, 9136, ¶ 57 (2004) (finding that an examination of CLEC costs in providing access services would be "contrary to the Commission's market-based approach."); *Seventh Report & Order*, 16 FCC Rcd. at 9939, ¶ 41 & n.93 (distinguishing CLECs from ILECs on the grounds that "ILEC access charges have been the product of an extensive regulatory process by which an incumbent's costs are subject to detailed accounting requirements, divided into regulated and non-regulated portions, and separated between the interstate and intrastate jurisdictions."). AT&T's request to ignore the Commission's entire body of CLEC-access-charge regulation must be rejected.

businesses and residences in its service territory,[55] many of whom are former CenturyLink customers or whom have never been offered modern, high-speed internet services, notwithstanding the billions of dollars in subsidies CenturyLink has been provided.[56] Great Lakes admits the irrelevant proposition that CenturyLink, as the legacy incumbent with a rate-payer-financed network, owns more switches in Iowa than Great Lakes. AT&T does not substantiate its allegation concerning CenturyLink's local loops in Iowa, and Great Lakes therefore denies it; that allegation is also irrelevant to both CenturyLink's and Great Lakes' access services and rates.[57] With respect to AT&T's irrelevant allegation regarding the number of switches CenturyLink has in the state of Iowa, AT&T's only support for that proposition is Mr. Habiak's "understanding," but his declaration offers no basis for that understanding. In light of the unsubstantiated nature of the claim, Great Lakes denies it. With respect to the remaining allegations in this paragraph, Great Lakes admits only that its service territory includes Lake Park, Milford, Spencer and surrounding communities in northwest Iowa, and that its conferencing customers' equipment to which Great Lakes terminates their telephone calls are located at or near Great Lakes' facilities; Great Lakes denies that its many telephone and internet service customers, which it has won from the incumbent and other CLECs in the area, are

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55 *See, e.g.,* **Exhibit 18** at 3-5, **Exhibit 19** at 4-6, **Exhibit 20** at 3-5 (Great Lakes' January 30, 2015, October 30, 2015, and April 29, 2016 Quarterly Reports filed with the IUB). *See also* Nelson Decl. ¶¶ 7-13.

56 *See, e.g.,* http://news.centurylink.com/news/centurylink-to-bring-broadband-to-1-2-million-rural-households-in-33-states.

57 *In re High-Cost Universal Serv. Support*, 24 FCC Rcd. 6475, 6574 ¶ 173 (Nov. 5, 2008) ("in the 1997 *Access Charge Reform Order*, the Commission modified the price cap rules for larger incumbent LECs by aligning the price cap LECs' rate structure more closely with the manner in which costs are incurred. Recognizing Congress's direction that universal service support should be 'explicit,' the Commission adopted rules to 'reduce usage-sensitive interstate access charges by phasing out local loop and other non-traffic sensitive costs from those charges and directing incumbent LECs to recover those NTS [non-traffic sensitive] costs through more economically efficient, flat-rated charges.'").

"minimal"; the deposition testimony of Mr. Nelson cited by AT&T contains no such derisive references to the company's customers.[58]

55. The only factual support AT&T offers for the proposition that "CenturyLink typically delivers traffic at the volumes at issue in this case via a direct connection arrangement" is the conclusory, unsubstantiated statement of AT&T's proffered expert that "it is my understanding that traffic volumes in the ranges at issue in this case would be typically delivered to CenturyLink through a direct connection, not a tandem connection." Because Dr. Toof, whose experience in the telecommunications industry has almost exclusively been limited to being a damages witness for AT&T,[59] offers no support for that "understanding," Great Lakes denies it. Indeed, AT&T's business records produced in the underlying litigation fail to establish that CenturyLink was even capable of providing a direct connect service capable of carrying AT&T's quantity of Great Lakes-bound calls to Great Lakes' switch in Spencer.[60] Great Lakes denies that it has "refused to offer AT&T such an arrangement," as noted in paragraph 4 above, and further denies that it carries more traffic than CenturyLink, as noted in paragraph 53 above. Great Lakes admits that its first federal access tariff, which is irrelevant to the traffic at issue here, included a direct connect offering, but the rates for Great Lakes' services were benchmarked to NECA tariffed rates, and Great Lakes therefore denies that its "initial tariff mirrored that of

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[58] *See also* Nelson Decl. ¶¶ 10-13. Footnote 144 of the Complaint refers to an unidentified "industry database" that allegedly indicates that Great Lakes "may have a few additional facilities," and then muses about whether those unidentified facilities may be similar to the equally unidentified facilities of CenturyLink. Great Lakes clearly cannot respond to this unsubstantiated, irrelevant allegation, and therefore denies it.

[59] *See* Great Lakes' Motion to Exclude Testimony of AT&T's Expert Witness, David I. Toof, Ph.D., at Section IV.A; *see also* **Exhibit 13**, Toof Dep. 159-191.

[60] *See, e.g.,* **Exhibit 21**, Habiak Dep. Exs. 15, 16 & 18; *see also* **Exhibit 22**, Habiak Dep. at 161-171, 181-183 (authenticating Habiak Dep. Exs. 15, 16 & 18).

CenturyLink's tariff."[61] Great Lakes adds that its original tariff provided that direct-trunked transport was not available from end offices that provide equal access through a Centralized Equal Access arrangement, which AT&T admits is the case here.[62] Great Lakes further adds that, in the roughly six years its first tariff was operative, AT&T never requested or purchased the tariffed direct connect service, despite consistently sending Great Lakes many, many multiples of the volumes of traffic it now claims warrant a "direct" connection arrangement (albeit from hypothetical CenturyLink facilities).[63]

56. Great Lakes admits only that, at some point in the first several months of 2012, Mr. Giedinghagen of AT&T called Mr. of Great Lakes to ask whether AT&T could direct connect to Great Lakes' network. Mr. Giedinghagen was not prepared to explain how that direct interconnection would be implemented (whether in TDM or IP and whether a third-party carrier would still be involved in the call flow) or what rate AT&T was willing to pay Great Lakes for such an unregulated service; in light of the absence of those key details, and in the absence of a duty to establish a direct connection, Mr. Nelson declined.[64] Great Lakes denies that Mr. Habiak's declaration is competent proof that AT&T requested a direct connect from Great Lakes or that Great Lakes refused the request; when questioned at his deposition in November 2014 on Mr. Giedinghagen's conversation with Mr. Nelson, his only testimony was "I have no idea," "I – I don't remember," and "I don't know,"[65] and his August 15, 2016 declaration does not describe

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61 *See* **Exhibit 23**, Tariff F.C.C. No. 1 § 12.2.

62 *See id*. § 5.2; Formal Compl. ¶ 19; *see also* 47 C.F.R. § 69.112(i) (providing that CEA providers like INS are not required to provide direct-trunked transport service).

63 Nelson Decl. ¶ 14; *Cf.* **Exhibit 24**, ATT0000750 (showing that, since January 2007, AT&T had never sent less than approximately ten million minutes a month of traffic) *with* Habiak Decl. ¶ 5 (identifying when AT&T allegedly "typically considers implementing a direct connection arrangement to the LEC's end office).

64 Nelson Decl. ¶ 14.

65 **Exhibit 22**, Habiak Dep. 76:19-77:16

what the basis for his statement is. With respect to AT&T's characterization of Mr. Nelson's testimony concerning the reasons for declining AT&T's initial direct connection request, Great Lakes states that the testimony speaks for itself, and it clearly shows that AT&T's counsel, after receiving one reason from Mr. Nelson, never allowed Mr. Nelson to answer the follow-up question "Is there anything more beyond that?"[66] **[BEGIN HIGHLY CONFIDENTIAL]** [redacted][68] **[END HIGHLY CONFIDENTIAL]** Great Lakes admits the allegations in the final two sentences of this paragraph. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted].[69] **[END HIGHLY CONFIDENTIAL]**

57. Great Lakes denies that it does not have a direct connection with AT&T "[b]ecause GLCC does not offer a direct connection arrangement by tariff, and has otherwise refused to provide such an arrangement to AT&T under a contract with terms comparable to CenturyLink's service." AT&T offers no support for that proposition, and Great Lakes reiterates,

66 *See* AT&T Ex. 6, Nelson Dep. 120:9-127:12.
67 *Id.*
68 Nelson Decl. ¶¶ 18-20.
69 *Id*.

as noted above, that it has **[BEGIN CONFIDENTIAL]** [redacted], **[END CONFIDENTIAL]** and even accepted one of AT&T's requests for a direct connection, which AT&T refused to implement.[70] Great Lakes admits that AT&T hands its Great Lakes-bound traffic off to INS, which in turn hands the calls off to Great Lakes for termination to the appropriate end user customer. The Commission's *Alpine* order speaks for itself, as does the Commission's order approving the CEA arrangement for Iowa.[71]

58. Except to admit that the great majority of calls at issue in this case are terminated to Great Lakes' high-volume customers, which AT&T refers to as "Free Calling Parties," Great Lakes denies that its traffic is "[u]nlike the traditional traffic handled by INS." Mr. Habiak's declaration offers no evidence of how a conference call is not "traditional," and Great Lakes therefore denies the characterization. While AT&T's description of the call path omits the significant quantity of Great Lakes-bound calls that AT&T has voluntarily marketed and sought on the private wholesale market,[72] Great Lakes admits that AT&T hands its Great Lakes-bound traffic (both wholesale and retail) off to INS, which in turn hands the calls off to Great Lakes for termination to the appropriate end user customer.

59. Great Lakes denies that it has "fail[ed] to offer a direct connection arrangement via tariff," as noted above, Great Lakes has no such duty under existing law, as explained in its accompanying Legal Analysis, and as Mr. Habiak has already testified to as noted above in paragraph 52; also as noted above, AT&T never availed itself of the tariffed direct connect

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70 *See* **Exhibit 9**, M. Hunseder June 26, 2015 letter & email to D. Carter; *Great Lakes Commc'n Corp. v. AT&T Corp.*, 124 F. Supp. 3d 824, 839 (N.D. Iowa 2015).

71 *In re the Application of Iowa Network Access Div.*, 3 FCC Rcd. 1468 (1988).

72 *See, e.g.,* **Exhibit 25**, Macanaspie Dep. Ex. 21 (AT&T's report showing the approximately **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** it earned just in wholesale revenue alone on Great Lakes-bound traffic between 2010 and October 2014); *see also* **Exhibit 26**, MacAnaspie Dep. 16-19 (authenticating Dep. Ex. 21).

offering for the approximately six years it was available.[73] Great Lakes also denies AT&T's unsubstantiated claim that Great Lakes has "forced AT&T (and therefore its customers) to pay significant amounts for INS's service." AT&T offers no evidence to substantiate that claim, presumably because there is none, as AT&T has engaged in its reflexive self-help negotiating tactic with INS and thus is not paying INS for Great Lakes-related traffic.[74] Great Lakes admits that $0.00896 is INS's current rate for its tariffed CEA service. Great Lakes does not have sufficient information to admit or deny the statement regarding the total charges that INS has billed to AT&T and, for this reason, denies it. Great Lakes notes, however, that AT&T's proffered expert witness reported that AT&T only paid INS approximately **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of the total amount that AT&T claims to have been billed by INS for Great Lakes-related traffic (and AT&T fails to detail whether that amount is the total amount of usage-based charges or if it includes presumably substantial late-payment charges in light of AT&T's independent decision to engage in self-help vis-à-vis INS's tariffed charges).[75] Great Lakes denies that "AT&T could have avoided INS's expensive services and delivered the traffic at issue to Spencer via a less costly means" if Great Lakes had "agreed to provide AT&T with direct connection arrangements." First, as noted above, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** Great Lakes cannot be liable for AT&T's own decisions. Second, AT&T has offered no evidence that it, CenturyLink, or any other carrier actually had or has the

[73] Nelson Decl. ¶¶ 2-3.

[74] *See* Formal Compl. ¶ 19 & n.34 (referring to the collection action INS has filed against AT&T).

[75] *See* AT&T Ex. 13, Toof Report at Ex. DIT-8; AT&T Ex. 13, Toof Report at ¶ 141; **Exhibit 13**, Toof Dep. 54:6-56:12.

facilities and capacity needed to provide a direct trunked transport service from any particular AT&T POP to Great Lakes' switch in Spencer. Again, Mr. Geiginghagen was unprepared to explain how, as a technical matter, AT&T would get what AT&T characterizes as "enormous traffic volumes" to Great Lakes directly.[76] As noted above in paragraph 55, AT&T's business records produced in the underlying litigation do not establish that CenturyLink was even capable of providing a direct-trunked transport service capable of carrying AT&T's quantity of Great Lakes-bound calls to Great Lakes' switch in Spencer.[77] AT&T's claim assumes – but makes no effort to prove – that CenturyLink actually had the capacity available to provide the direct-trunked transport service on which its "savings" calculations are based. There is no logical reason to assume that CenturyLink would have built such a significant amount of idle capacity to Spencer; and, as Mr. Habiak has testified, purchasing a direct connection "can be costly if construction is required."[78] For the reasons given in Mr. Starkey's accompanying declaration, Great Lakes denies that AT&T has accurately calculated the monthly rate for the hypothetical indirect connection AT&T would purchase from CenturyLink, and therefore also denies AT&T's "savings" calculation from this hypothetical indirect connection.[79]

60. Great Lakes repeats and realleges each and every response contained in paragraphs 1 through 59 of this Answer as if set forth fully here.

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[76] Formal Compl. ¶ 53; Nelson Decl. ¶ 14; *see also* **Exhibit 27** (Email between counsel showing that, as recently as last month, AT&T still has not communicated to Great Lakes how AT&T's traffic would get to Spencer).

[77] *See, e.g.,* **Exhibit 21**, Habiak Dep. Exs. 15, 16 & 18; *see also* **Exhibit 22**, Habiak Dep. at 161-171, 181-183 (authenticating Habiak Dep. Exs. 15, 16 & 18); *see also* AT&T Ex. 89 (K. Giedinghagen Jan. 23, 2012 email stating "[t]he huge number of trunks is an issue because many switches do not have much spare capacity to handle this quantity of trunks.").

[78] **Exhibit 17**, ATT0002022 (Excerpt of J. Habiak testimony before the Michigan Public Service Commission, Sept. 23, 2014); *see also* Starkey Decl. ¶¶ 14-15.

[79] Starkey Decl. ¶¶ 5-18.

61. In this paragraph, AT&T recites its motivation for asking Great Lakes to "provide a 'direct connection' between AT&T's facilities and GLCC's end office switch." AT&T offers no factual support for why the existing, FCC-authorized CEA service provided by INS is not "efficient," and therefore Great Lakes denies that allegation on that basis. While Great Lakes admits that AT&T has expressed a desire for cheaper service, it has never stated, and offers no factual support for the claim that it seeks a direct connection between "AT&T's facilities" and Great Lakes' end office switch, and Great Lakes therefore denies that allegation on that basis. To the contrary, as noted in paragraph 59 above, even AT&T's hypothetical modeling exercise assumes that CenturyLink's ILEC in Iowa would provide the direct-trunked transport from Des Moines to Great Lakes' switch in Spencer (with no underlying factual support for the proposition that the requisite amount of significant capacity actually exists and is and has been available for AT&T's use).[80] AT&T likewise offers no factual support for the proposition that "[d]irect connections avoid the need to incur any tandem switching or per-minute transport costs," and therefore Great Lakes denies that claim on that basis. Great Lakes admits that direct-trunked transport, when properly sized and provisioned, can achieve that result, but given AT&T's highly fluctuating activity on the wholesale market and concomitant volume swings in the traffic it has been delivering to Great Lakes on a monthly basis,[81] AT&T's assumption that CenturyLink (or any other carrier) would "right-size" direct-trunked transport facilities in real time and with those significant fluctuations is highly dubious, and Great Lakes denies it on that basis.[82]

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[80] Formal Compl. ¶ 53; Nelson Decl. ¶¶ 14, 21; *see also* **Exhibit 27**.

[81] AT&T Ex. 91, for example, shows MOUs fluctuating during the relevant time period from **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

[82] *See also* Starkey Decl. ¶ 7-18.

62. Great Lakes denies this allegation for the reasons given in paragraphs 56 through 61 above.

63. Great Lakes denies this allegation for the reasons given in paragraph 59 above.

64. Great Lakes denies the legal conclusion in the first sentence of this paragraph for the reasons given in its accompanying Legal Analysis. Section 201(b) of the Communications Act speaks for itself, and AT&T's request for new law, which could apply only prospectively, would require, *inter alia*, Section 251(a) of the Act to be rewritten (which the Commission obviously cannot do), 47 C.F.R. § 61.26 to be rewritten, and the reversal of the Commission's holding in the *Local Competition Order* that "indirect connection . . . satisfies a telecommunications carrier's duty to interconnect pursuant to section 251(a)," and that "direct interconnection . . . is not required under section 251(a)."[83]

65. Great Lakes disputes AT&T's characterization of the Commission's *Connect America Fund Order*, including its use of the present-tense "produces" vis-à-vis the Commission's 2011 Order, and the associated revisions to 47 C.F.R. § 61.26, which speak for themselves. Great Lakes' position regarding these matters is set forth in greater detail in its accompanying Legal Analysis.

66. Admitted.

67. As noted above, AT&T has never requested that its "long distance network [be] directly connected to GLCC's facilities;" instead, it has sought interconnection via a different intermediate carrier, which it has never identified, except to note in legal documents what CenturyLink's tariffed direct-trunked transport rates are, assuming those facilities actually exist, which AT&T has never endeavored to prove, much less proven. Further, Great Lakes denies that

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[83] *See In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, 15991 ¶ 997 (1996) ("*Local Competition Order*").

AT&T "must purchase tandem switching and switched transport services from INS," insofar as AT&T has various other IXCs and intermediate carriers that could transport AT&T's Great Lakes-bound traffic to Great Lakes, and thus avoid both INS's and Great Lakes' tariffed charges.[84] Thus, AT&T does not have to purchase INS's CEA service. AT&T does not have a direct connection with Great Lakes – or indirect connection with Great Lakes involving an intermediate carrier other than INS because, inter alia, AT&T's initial request[85] for a direct connection failed to articulate a coherent, available network interconnection proposal or pricing terms; because AT&T has **[BEGIN CONFIDENTIAL]** [redacted];[86] **[END CONFIDENTIAL]** and because AT&T refused to allow Great Lakes to unequivocally accept AT&T's demand for a direct connect on all terms offered by AT&T.[87] Each of those circumstances are within AT&T's exclusive control. AT&T has therefore elected to hand its Great Lakes-bound calls off to the FCC-approved CEA provider in Iowa, INS, whose service it has likewise been taking for free for several years.[88] Great Lakes denies the qualitative, argumentative statements contained in the final sentence of this paragraph.

68. Great Lakes denies that AT&T's hypothetical direct-connect exercise accurately accounts for the terms of CenturyLink's tariff and neglects to establish that the facilities and services it hypothetically would have purchased actually existed and would be available at the prices estimated by AT&T.[89]

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84 *See* Nelson Decl. ¶ 20.
85 *Id.* at ¶¶ 14-17.
86 *Id.* at ¶¶ 16-17; **Exhibits 2-8**.
87 *See* **Exhibit 9**, M. Hunseder June 26, 2015 letter & email to D. Carter.
88 *See* Formal Compl. ¶ 19 & n.34 (referring to the collection action INS has filed against AT&T).
89 *See* Starkey Decl. ¶¶ 7-18.

69. Great Lakes admits that CenturyLink, an ILEC, offers direct-trunked transport, and special construction services, under the terms and conditions laid out in its tariff, which speaks for itself.[90] Great Lakes denies AT&T's estimate of its hypothetical cost savings for the reasons given above.

70. Great Lakes denies that it has violated the *Connect America Order* for the reasons given in its accompanying Legal Analysis. Great Lakes denies the remaining allegations in this paragraph because they are unsupported (particularly in light of AT&T's habitual practice of not paying for access service), and further denies the claim that Great Lakes has caused any harm to AT&T by virtue of complying with its legal obligations or otherwise not constructing special transport facilities for AT&T's exclusive use, all while AT&T refuses to pay Great Lakes for the tariffed services it actually provides at Commission-approved rates.[91]

71. Great Lakes denies the legal conclusion stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

72. Great Lakes denies the legal conclusion stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

73. Great Lakes repeats and realleges each and every response contained in paragraphs 1 through 72 of this Answer as if set forth fully here.

74. Great Lakes admits that the highly excerpted words and phrases quoted by AT&T appear in Sections 203(c) and 201(b) of the Communications Act, which speak for themselves.

75. The allegations in this paragraph are a conclusory allegation summarizing AT&T's legal argument that it does not owe Great Lakes' tariffed access charges on calls it

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90 *See also* 47 C.F.R. § 69.112.

91 AT&T Ex. 61, Starkey Rebuttal Report at 4 (confirming that Great Lakes' tariff rates match those of CenturyLink's).

terminated to Great Lakes high-volume customers, a claim Great Lakes denies as stated herein and in its accompanying Legal Analysis.

76. Great Lakes admits that the highly excerpted phrases quoted by AT&T appear in Great Lakes' operative Tariff, which speaks for itself, and Great Lakes denies the legal conclusions and mischaracterizations of its tariff for the reasons given above, including in paragraph 39, and its accompanying Legal Analysis.

77. Great Lakes denies the erroneous legal conclusions and factual assertions in this paragraph for the reasons given above, including in paragraphs 41-46, and in its accompanying Legal Analysis.

78. Great Lakes denies the erroneous legal conclusions and factual assertions in this paragraph for the reasons given in paragraphs 47 and 48 above and in its accompanying Legal Analysis.

79. Great Lakes denies the conclusory legal argument in this paragraph for the reasons given above and in its accompanying Legal Analysis. AT&T's tortured reading of Great Lakes' Telecommunications Service Agreements with its high-volume customers aside, they each do in fact pay Great Lakes a fee for telecommunications service, and thus are end users under Great Lakes' tariff.[92]

80. Great Lakes denies the conclusory legal argument in this paragraph for the reasons given above and in its accompanying Legal Analysis. AT&T violated the Act and Great Lakes' deemed lawful tariff by failing to comply with Great Lakes' tariffed dispute-resolution provision.

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[92] **Exhibit 10**, Starkey Report at 6-8; Legal Analysis § II.

81. Great Lakes denies the conclusory legal argument in this paragraph for the reasons given above and in its accompanying Legal Analysis.

82. Great Lakes repeats and realleges each and every response contained in paragraphs 1 through 81 of this Answer as if set forth fully here.

83. Great Lakes denies the conclusory legal argument in this paragraph for the reasons given in its accompanying Legal Analysis.[93]

84. Great Lakes denies the conclusory legal argument in this paragraph for the reasons given in its accompanying Legal Analysis.[94]

85. Great Lakes denies the conclusory legal argument in this paragraph for the reasons given in its accompanying Legal Analysis.

86. For all of the reasons set forth above as well as in the accompanying parts of this Answer, Great Lakes denies that AT&T is entitled to any of the relief that it seeks. Rather, the Commission should hold that (a) Great Lakes' high-volume conferencing customers are "End Users" under Great Lakes' tariff, or, in the alternative, that (b) AT&T violated Great Lakes' deemed lawful dispute-resolution provision and (c) the Commission has not preempted state law claims for recovery of services that an IXC like AT&T claims are not access service provided pursuant to tariff.

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[93] *See, e.g., N. Valley Commc'ns, L.L.C. v. AT&T Corp.*, No. 1:14-CV-01018-RAL, 2015 WL 11675666, at *5 (D.S.D. Aug. 20, 2015) ("Thus, if Northern Valley's services are not access services, then they not only fall outside the tariff as AT&T claims, but also fall outside the scope of the FCC rule limiting the methods by which a CLEC may charge.")

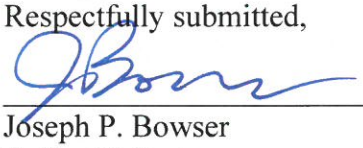
[94] *See* Legal Analysis § IV; **Exhibit 16**, Fischer Rebuttal Report at 10-12; **Exhibit 14**, Starkey Rebuttal Report at 30-31.

47 C.F.R. § 1.724(h) Certification

As reflected above in, *inter alia*, Paragraphs 4 and 12, Great Lakes has, in good faith, discussed and attempted to discuss the possibility of settlement with AT&T on numerous occasions before it filed its Formal Complaint. As reflected in those paragraphs, and the cited exhibits, Great Lakes has made numerous offers of settlement to AT&T, each of which have been rejected.

DATED: September 15, 2016

Respectfully submitted,



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COUNSEL FOR GREAT LAKES COMMUNICATION CORP.

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2016, I caused a copy of the foregoing Answer, and all accompanying materials, to be served as indicated in brackets below to the following:

Marlene H. Dortch
Office of the Secretary
Market Disputes and Resolution Division
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

[Public Version via ECFS and Original via Federal Express; the Confidential Version and Highly Confidential Version via Federal Express]

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Anthony DeLaurentis
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Enforcement Bureau
445 12th St., S.W.
Washington, DC 20554

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Respectfully submitted,

Joseph P. Bowser

Before the FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(202) 457-3090

Complainant,

v. **File No. EB-16-MD-001**

GREAT LAKES COMMUNICATION CORP.
1501 35th Avenue, W
Spencer, IA 51301
(712) 580-4700

Defendant.

AFFIDAVIT REGARDING RESPONSES BASED ON INFORMATION AND BELIEF PURSUANT TO 47 C.F.R. § 1.724(b)

I, Joseph P. Bowser, do depose under oath and state as follows:

1. I am counsel to Great Lakes Communication Corp. ("Great Lakes") in the above-captioned proceeding. In my capacity as counsel of record, I have been involved in preparing Great Lakes' Answer to AT&T's Formal Complaint, which seeks information from Great Lakes regarding matters addressed by this Affidavit.

2. In responding to the Formal Complaint, Great Lakes has denied certain allegations on the grounds that it does not have sufficient information to admit or deny those allegations. This Affidavit is submitted in good faith pursuant to 47 C.F.R. § 1.724(b), to address Great Lakes' denials based on information and belief.

3. Paragraph 59 of the Formal Complaint set forth an allegation as to how much INS has billed AT&T during the relevant period. Great Lakes is not privy to INS's charges to AT&T, whether relating to Great Lakes' traffic or any other traffic. In the underlying litigation, AT&T

did not produce underlying business records that would enable Great Lakes to validate the amount cited by AT&T. Moreover, the information at issue is uniquely within the possession of AT&T (and INS) and thus not capable of being validated by any public records. Upon knowledge, information and belief, Great Lakes is without sufficient information to admit or deny the statement regarding the total charges that INS has billed to AT&T and, as such, has denied it. Great Lakes has requested similar information in its Request for Interrogatories.

COMMONWEALTH OF VIRGINIA)

CITY OF RICHMOND)

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 15th, 2016.

Joseph P. Bowser

Subscribed and sworn to before me this 15th day of September, 2016.

SHANNON MARGARET WILKE NOTARY PUBLIC REG # 7652990 COMMISSION EXPIRES 5/31/2019 COMMONWEALTH OF VIRGINIA

Notary Public, Virginia
My Commission Expires: 5/31/2019

Before the FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(202) 457-3090

Complainant,

v. **File No. EB-16-MD-001**

GREAT LAKES COMMUNICATION CORP.
1501 35th Avenue, W
Spencer, IA 51301
(712) 580-4700

Defendant.

LEGAL ANALYSIS IN SUPPORT OF GREAT LAKES' ANSWER

TABLE OF CONTENTS

Pursuant to Section 1.724(c) of the rules of the Federal Communication Commission ("Commission" or "FCC"),[1] Great Lakes Communication Corp. ("Great Lakes") respectfully submits this Legal Analysis in support of its Answer to the Formal Complaint submitted by AT&T Corp. ("AT&T") in File No. EB-16-MD-001.

INTRODUCTION

For many years leading up to the Commission's 2011 *Connect America Fund Order*, AT&T's army of lawyers and lobbyists aggressively – and unsuccessfully – lobbied the Commission to eliminate AT&T's duty to pay tariffed access charges for calls terminating to high-volume conference calling and similar services.[2] The Commission rejected that request, and established 47 C.F.R. § 61.26(g) instead. Because AT&T's Formal Complaint is largely a collateral attack on the Commission's existing rules applicable to competitive local exchange carriers' ("CLECs'") tariffed access charges, Great Lakes first offers a brief explanation of the relevant guiding principles the Commission has established for those charges over the course of the last 16 years. There are three operative rulings from the Commission regarding CLEC access charges, all of which AT&T is collaterally attacking:

The *Seventh Report & Order* (2001): The Commission established its CLEC benchmarking rule in 2001, 47 C.F.R. § 61.26, in part to provide "greater certainty, and a more reliable stream of revenue [to CLECs], because we conclude that CLEC access rates will be conclusively deemed reasonable if they fall within the safe harbor that we have established [in §

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1 47 C.F.R. § 1.724(c).

2 *See In re Connect America Fund Order*, 26 FCC Rcd. 17663, 17879, ¶ 672 & n.1113 ("*Connect America Fund Order*") (reciting that certain "parties argue that the Commission should prohibit the collection of switched access charges for traffic sent to access stimulators," and citing AT&T's comments).

61.26]."[3] With this Order, the Commission intended to mitigate the significant, harmful self-help that IXCs like AT&T had been engaged in as a negotiating tactic to pressure CLECs to lower their tariffed access rates. *Id.* The Commission did not require CLECs to conform to the incumbent local exchange carriers' ("ILEC") rate structure in satisfying the Commission's benchmark rule.[4] And the Commission made it repeatedly clear that it was establishing a **bright-line rule** that would make it easy to determine whether a CLEC's rate – a singular number for all IXCs, regardless of their traffic volumes – satisfied the benchmark.[5] Under this benchmark rule, a CLEC could tariff – and collect from IXCs without the impediment of a primary jurisdiction

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[3] *In re Access Charge Reform of Access Charges Imposed by Competitive Local Exch. Carriers*, Seventh Report & Order, 16 FCC Rcd. 9923, 9948, ¶ 60 (2001) ("*Seventh Report & Order*").

[4] *Id*. at ¶ 55 ("We seek to preserve the flexibility which CLECs currently enjoy in setting their access rates. Thus, in contrast to our regulation of incumbent LECs, our benchmark rate for CLEC switched access does not require any particular rate elements or rate structure; for example, it does not dictate whether a CLEC must use flat-rate charges or per-minute charges, so long as the composite rate does not exceed the benchmark. Rather it is based on a per-minute cap for all interstate switched access service charges. In this regard, there are certain basic services that make up interstate switched access service offered by most carriers. Switched access service typically entails: (1) a connection between the caller and the local switch, (2) a connection between the LEC switch and the serving wire center (often referred to as 'interoffice transport'), and (3) an entrance facility which connects the serving wire center and the long distance company's point of presence. Using traditional ILEC nomenclature, it appears that most CLECs seek compensation for the same basic elements, however precisely named: (1) common line charges; (2) local switching; and (3) transport."); the footnote that followed this quote, footnote 126, provides as follows: "Thus, the safe harbor rate applies, but is not necessarily limited, to the following specific rate elements and their equivalents: carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching."). AT&T's case falls apart because it is predicated on distorting the Commission's recognition that "ILEC nomenclature" varied, and thus it noted that, "however precisely named," the CLEC benchmark "rate" consisted of the eight identified elements listed in 47 C.F.R. § 61.26(3)(i). *Id.*

[5] *Id*. at ¶ 4 (characterizing the benchmarking rule as a "**bright line rule** that permits a simple determination as to whether CLEC access charges are just and reasonable") (emphasis added); *id*. at ¶ 25 (47 C.F.R. 61.26 is "a **bright-line rule** that will facilitate effective enforcement.") (emphasis added); *id*. at ¶ 41 ("a benchmark provides a **bright line rule**"); *id*. at ¶ 118 ("this approach will provide a **bright line rule**") (emphasis added).

referral[6] – the rate for its switched exchange access services, as defined in 47 C.F.R. § 61.26(a)(3)(i), at the same level as those of the competing ILEC. Here, AT&T is asking the Commission to revise 47 C.F.R. § 61.26(a)(3) in a fashion that would violate the plain language of the regulation itself, conflict with Congress's allowance for *indirect* interconnection by non-ILECs in 47 U.S.C. § 251(a), and violate the Commission's policy objective of establishing a "bright line" benchmarking rule.

The *Eighth Report & Order* (2004): Disputes over the application of the Commission's benchmark rule soon arose, with IXCs like AT&T resorting again to self-help, so in 2004 the Commission confirmed that "a competitive LEC is entitled to charge the **full benchmark rate** if it provides an IXC with access to the competitive LEC's own end-users."[7] The Commission confirmed that, as is the case here, even when the call passes through an intermediary LEC between the IXC and the terminating LEC, the CLEC is still entitled to the "full benchmark rate."[8] The Commission also found that, if the CLEC is not serving the end user, then its "charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions."[9] Here, AT&T is asking the Commission to reverse its finding in the *Eighth Report & Order* that CLECs are entitled to

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6 *Id*. at ¶ 60.

7 *In re Access Charge Reform,* Eighth Report & Order & Fifth Order on Recon., 19 FCC Rcd. 9108, ¶ 9 (2004) ("*Eighth Report & Order*").

8 *Id*. at ¶ 13 ("The rate elements identified in section 61.26(a)(3) reflect those services needed to originate or terminate a call to a LEC's end-user. When a competitive LEC originates or terminates traffic to its own end-users, it is providing the functional equivalent of those services, even if the call is routed from the competitive LEC to the IXC through an incumbent LEC tandem. Consequently, because there may be situations when a competitive LEC does not provide the entire connection between the end-user and the IXC, but is nevertheless providing the functional equivalent of the incumbent LEC's interstate exchange access services, we deny Qwest's petition.").

9 *Id*. The principle is codified in 47 C.F.R. § 61.26(f).

the "full benchmark rate" when the CLEC serves the end user, even if the call passes through an intermediate LEC's network.

The *Connect America Fund Order* (2011): In relevant part, the Commission established a new benchmarking standard for LECs, like Great Lakes, that are parties to a revenue-sharing agreement with one or more of their end user customers under which, in exchange for attracting usage to the LEC's network, the LEC provides some form of consideration to the customer, typically in the form of a share of access charges collected by the LEC.[10] Rejecting AT&T's and other IXCs' heated requests to detariff the service, outlaw the service, deprive the service of deemed-lawful protection, or re-rate the tariffed service to $0.0007/minute, the Commission established that the rates of a CLEC, like Great Lakes, are just and reasonable under the Act if they are benchmarked to the rates of the price-cap ILEC with the lowest rates in the state.[11] Here, despite the Commission's rejection of AT&T's various policy proposals, AT&T is asking the Commission to now hold that, even though its only modification to the CLEC benchmarking rule vis-à-vis access stimulation was to change which ILEC the access-stimulating LEC had to benchmark its rates against,[12] the Commission also somehow (silently) changed the bundle of access services in 47 C.F.R. § 61.26(a)(3)(i) that makes up the "full benchmark rate" defined in 47 C.F.R. § 61.26(a)(5).

Therefore, under the FCC's current rules, as a CLEC that has one or more revenue-sharing agreements with its customers, Great Lakes' FCC tariff rates need only mirror those of

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10 *Connect America Fund Order,* ¶¶ 692, 695; *see also* 47 C.F.R. § 61.3(bbb) ("access stimulation" defined).

11 47 C.F.R. § 61.26(g). The Commission also reminded IXCs like AT&T that "[w]e do not endorse such withholding of payment outside the context of any applicable tariffed dispute resolution provisions," and "caution[ed] parties of their payment obligations under tariffs." *Connect America Fund Order*, ¶ 700.

12 47 C.F.R. § 61.26(g)(1).

the price-cap ILEC with the lowest rates in Iowa to be presumptively just and reasonable.[13] Apart from identifying the applicable ILEC against which a CLEC should benchmark its tariff access rates, a CLEC's duty to mirror the business practices of an ILEC ends. As a CLEC, Great Lakes' and all other CLECs' rates of return have nothing to do with the rate that they may charge IXCs for access services pursuant to tariff.[14]

While the FCC created the "bright line," easy-to-follow benchmarking system for CLECs' access charges *to IXCs* in its 2001 *Seventh Report & Order*, the FCC held that "in keeping with their competitive, unregulated character, CLECs should be permitted to set the combined level of their access charges, for all the consumers of the service [i.e., IXCs and end users], as they please."[15] The FCC made clear that "we continue to abstain entirely from regulating the market in which end-user customers purchase access service."[16] Thus, the Commission does not regulate the CLEC/end-user relationship vis-à-vis access service.

This is in direct contrast to the Commission's regulation of the ILEC/end-user relationship. As the Commission has held, the Commission's distinctly different regulatory regimes applicable to ILECs and CLECs results in various differences in how they report data and otherwise meet their regulatory burdens, such as recovery of end user charges and how such fees get reported to the Commission:

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13 47 C.F.R. § 61.26(g).

14 *See*, *e.g.*, *AT&T Corp. v. Bus. Telecom, Inc.*, Mem. Op. & Order, 16 FCC Rcd. 12312, 12321-23, ¶¶ 17-22 (2001) (noting that examination of a CLEC's costs as the touchstone of rate-setting would be contradictory to the FCC's "reliance on market factors to dictate the appropriate rates" of CLECs); *Eighth Report & Order*, 19 FCC Rcd. at 9136, ¶ 57 (examination of CLEC costs in providing access services would be "contrary to the Commission's market-based approach."); *Seventh Report & Order*, 16 FCC Rcd. at 9939, ¶ 41 & n.93 (distinguishing CLECs from ILECs on the grounds that "ILEC access charges have been the product of an extensive regulatory process by which an incumbent's costs are subject to detailed accounting requirements, divided into regulated and non-regulated portions, and separated between the interstate and intrastate jurisdictions").

15 *Seventh Report & Order*, 16 FCC Rcd. at 9938, ¶ 39.

16 *Id*. (emphasis added).

> [T]he Commission's rules set forth precisely how ILECs must recover from their end-user subscribers and interexchange carriers the costs assigned to the interstate jurisdiction. In particular, **the rules require ILECs to recover a portion of the local loop through a flat-rate SLC assessed on the end-user customer.** Consistent with these rules, revenues derived from the SLC must be reported as interstate revenue on the FCC Form 499 for USF contribution purposes.
>
> **There is no corresponding requirement for CLECs.** We agree with Petitioners that neither the Commission's formal separation process that governs how ILECs assign their costs to intrastate and interstate jurisdictions, nor the access charge rules that govern how ILECs recover those costs from their customers apply to CLECs. Although CLECs must report their end-user interstate revenues on the FCC Forms 499, **no Commission rule or order requires them to identify and recover from their end-user customers a SLC or equivalent charge for the non-traffic-sensitive costs of providing interstate or interstate exchange access service.**[17]

Thus, even though the same lines and facilities that allow a CLEC to provide local service to an end user are also used to provide them with interstate access service, the Commission made it clear that CLECs are not required to pretend that they charge an explicit interstate charge to their end user if they do not, and thus do not need to allocate any of the end user revenues to the interstate revenue category on the CLECs' Form 499s.[18]

Through its *Seventh* and *Eighth Report & Orders* and the *Connect America Fund Order*, the Commission addressed IXCs' complaints of "regulatory arbitrage" by regulating CLECs' tariffed rates that IXCs, like AT&T, must pay CLECs, and it "continue[d] to abstain entirely from regulating" Great Lakes' relationship with its end user customers. Indeed, the Commission addressed the IXCs' concerns by capping CLEC access charges imposed on the IXCs at conclusively "just and reasonable" rates, and it left the CLECs' relationship with its end user customers unregulated. If a CLEC like Great Lakes can attract an important end user customer by cutting into its margins and sharing a portion of its revenues, the Commission wisely decided

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[17] *In re Universal Serv. Contribution Methodology,* Declaratory Ruling and Order, 28 FCC Rcd. 16037, ¶¶ 11-12 (Nov. 25, 2013) (emphasis added).

[18] *Id*.

that it was not going to regulate such decisions. Instead, in those circumstances where a CLEC chooses to share its revenue with an end user, the Commission required that lower access rates must also be available to IXCs like AT&T – a requirement that Great Lakes complied with via its FCC Tariff No. 2, effective January 26, 2012.[19]

Despite the FCC's clear rulings and guidance in this regard, AT&T has resorted once more to its tried-and-true approach of "self-help" – withholding tariffed access charges, and forcing far smaller carriers to pursue AT&T in lengthy and expensive court proceedings. In 2001, with its *Seventh Report & Order*, the FCC found that when the IXCs complained that CLECs were engaged in "regulatory arbitrage," the "IXCs' primary means of exerting pressure on CLEC access rates has been to refuse payment for the CLEC access services."[20] The FCC chastised the IXCs for their self-help: "We are concerned that IXCs appear routinely to be flouting their obligations under the tariff system. Additionally, the IXCs' attempt to bring pressure to bear on CLECs has resulted in litigation both before the Commission and in the courts."[21]

History has repeated itself here, with AT&T forcing a far smaller carrier to pursue a collection action to recover its tariffed charges even after the FCC established clear rules in the *Connect America Fund Order* for the very type of traffic at issue in this proceeding. *See also Global Access Ltd. v. AT&T Corp.*, 978 F. Supp. 1068, 1077 (S.D. Fla. 1997) ("In recent years, Congress and the FCC have attempted to streamline the regulations governing commercial behavior in the telecommunications sector and to increase the level of competition in the sale of telecommunications services. The FCC's introduction of a contract carriage regime is an important step towards those goals. AT&T, traditionally dominant, is understandably intent on

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19 Answer ¶ 35.

20 *Seventh Report & Order,* 16 FCC Rcd. at 9932, ¶ 23.

21 *Id*.

slowing the move to increased competition, and the position it urges the Court to adopt now would effectively eviscerate the FCC's 1991 change in policy.").[22]

ARGUMENT

I. GREAT LAKES COMPLIES WITH THE COMMISSION'S CLEC BENCHMARK RULE, WHICH DOES NOT, AND CANNOT, REQUIRE DIRECT-TRUNKED TRANSPORT

Count I of AT&T's Complaint – that Great Lakes has violated Section 201(b) of the Act by refusing to provide AT&T with a "direct connection" – is both wrong as a matter of law and factually unsupported. As AT&T's own witness, Mr. Habiak, has stated on multiple occasions in sworn testimony:

> Establishing a connection between two networks is expensive, and it requires time and the cooperation of *both* parties. **LECMI [a CLEC] has no obligation to establish a "direct" connection with AT&T Corp. or any other IXC, and no obligation to route traffic over such a connection if there were one. And obviously, LECMI has no incentive to establish a "direct" connection that results in much lower access revenues to itself** or cuts off its share of the

[22] Presumably because its legal arguments are without merit, AT&T's "Legal Analysis" begins with an *ad hominem* attack based on an irrelevant and dated proceeding at the Iowa Utilities Board that dealt with a different intrastate tariff, different intrastate law, and an entirely different factual record. AT&T Legal Analysis ("Brief" or "Br.") at 2-4. As the District Court rightly acknowledged in its Order on Motions for Summary Judgment, "the issues in that [IUB] case are distinct from the issues presently before the Court, as subsequent decisions, including the *Connect America Fund Order*, have significantly altered the legal landscape." AT&T Ex. 74, at 11. The Commission should decide this matter based on existing law rather than AT&T's emotional claims that it is in no position to make in any case. *See, e.g.,* https://apps.fcc.gov/edocs_public/attachmatch/DOC-332911A1.pdf ($25 million fine paid by AT&T for various data and security breaches of its customers' CPNI at numerous of its off-shore call centers in Mexico, Colombia, and the Philippines); https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-63A1_Rcd.pdf ($100 million notice of apparent liability for forfeiture and order assessed against AT&T for willfully and repeatedly lying to consumers and violating the Commission's Open Internet Transparency Rule). *See also* Declaration of Josh Nelson ¶¶ 4-13 ("Nelson Decl."). It is no secret that AT&T has been trying to put Great Lakes out of business, by any means necessary, for years. *See, e.g.,* **Exhibit 32** (AT&T lawyer expressing her disappointment when Sprint settled with Great Lakes because AT&T "was hoping we [the large IXCs] could all go after [Great Lakes] in response to Qwest [*sic*] filing renewing its request to revoke the Great Lakes [Certificate of Public Convenience and Necessity" at the IUB).

> Complainants' access revenues; to the contrary, **LECMI's natural self-interest creates an affirmative incentive *against* cooperation.**[23]

As shown below, Mr. Habiak is correct: CLECs have no obligation to provide a direct connection, and direct-trunked transport has no relevance whatsoever to the FCC's CLEC access charge rule. 47 C.F.R. § 61.26.

In fact, in the underlying litigation the District Court agreed with Great Lakes – **three times by all three judges who considered this issue** – that AT&T is asking for *new law* that does not exist and thus that the District Court would have to create. The Iowa District Court *dismissed* AT&T's counterclaim that accused Great Lakes of violating the Communications Act by refusing to establish a direct connection (AT&T Count III). In response to Great Lakes' motion to dismiss this counterclaim, Magistrate Judge Strand issued this Recommendation:

> As with Count II, the interests of agency expertise, consistency and uniformity compel a finding that the FCC has primary jurisdiction over **AT&T's claim that GLCC's alleged refusal to establish a direct connection is unjust or unreasonable**. And, as with Count II, I find that there is no reason to stay or delay this case pending the FCC's consideration of that claim. GLCC commenced this action to collect billed amounts allegedly owed by AT&T. **While Counts I and IV of AT&T's counterclaim raise issues that could directly impact GLCC's right to payment of its invoices, Counts II and III do not**. There is no reason to put GLCC's claims on hold while the FCC considers the issues raised in Counts II and III. As with Count II, **I recommend that Count III be dismissed without prejudice** pursuant to the primary jurisdiction doctrine.[24]

In other words, the first Judge to address this issue in this dispute found that AT&T's direct-connect claim was not based on existing law and thus served no impediment to Great Lakes' collection action on past-due amounts.

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[23] **Exhibit 1**, Rebuttal Testimony of John W. Habiak, on behalf of AT&T Corp., in Michigan Public Service Commission Case No. U-17619, at 4-5 (Sept. 11, 2014) (emphasis added in bold); *see also* ATT0002022-25 (J. Habiak testimony before the Michigan Public Service Commission, Sept. 23, 2014) ("LECMI is a CLEC, and they do not have an obligation to direct connect… for a CLEC, it's either through a tandem or through direct connect. It's not mandatory one way or the other.").

[24] *Great Lakes Commc'n Corp. v. AT&T Corp.*, No. C13-4117-DEO, 2014 WL 2866474, at *18 (N.D. Iowa June 24, 2014), *report and recommendation adopted in part*, 2015 WL 897976 (N.D. Iowa Mar. 3, 2015) (emphasis added).

Dissatisfied that its demand for a direct connect was recommended for dismissal, instead of the stay and referral that AT&T wanted, AT&T sought review by District Judge Donald O'Brien. But Judge O'Brien agreed with Magistrate Judge Strand, concluding that AT&T was not entitled to delay resolution of Great Lakes' claims for outstanding tariff charges by intermingling those claims with collateral, *prospective-only attacks* on its deemed-lawful tariff:

> In this case, AT&T has failed to show that it would be unfairly disadvantaged by dismissal… However, **the risk of delay if the issues are stayed is very real**. Accordingly, after conducting a de novo review, the Court will adopt Judge Strand's recommendation that Counterclaims II and III be **dismissed** without prejudice pursuant to the primary jurisdiction doctrine.[25]

Again, the Court found that there was nothing prejudicial about forcing AT&T to ask the Commission for new law separate and apart from Great Lakes' collection action. Undeterred, AT&T initiated a third request for a referral on the direct-connect issue, this time framing its request as the need for an agency determination of the scope of the FCC's benchmarking and functional equivalence requirements for access-stimulating LECs.[26] This time, District Judge Mark Bennett, who had been reassigned the case, had the opportunity to refer this issue to the FCC. **And he also declined**.[27] So when Judge Bennett referred three issues to the FCC (through an actual referral order), none of those issues involved AT&T's request for a direct connection. Thus, AT&T was told, **three times by three different judges**, that its attacks on Great Lakes' Tariff concerning the direct-connect issue were being dismissed, not referred, because the court would not co-mingle AT&T's request for new law with the justiciable issues regarding Great Lakes' entitlement to payment for *past* services.

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[25] *Great Lakes*, 2015 WL 897976, at *7 (N.D. Iowa Mar. 3, 2015) (emphasis added).

[26] *See* **Exhibit 28** (ECF No. 154 at 5-6) (AT&T's Brief in Support of Referral) (seeking referral because "AT&T claims that Great Lakes impermissibly revised its tariff to eliminate the least-costly option (which CenturyLink offers under its tariff) of direct transport at a flat monthly rate")

[27] *See Great Lakes Commc'n Corp. v. AT&T Corp*., 2015 WL 3948764, at *4-5 (N.D. Iowa June 29, 2015).

Yet AT&T now asks the Commission to find that Great Lakes violated the Act for failing to provide AT&T with a "direct connect," even though AT&T never meaningfully requested such a service or provided any of the details that would have been necessary for Great Lakes to even implement such a request.[28] AT&T's request for a non-tariffed service at off-tariff prices is barred by the filed tariff doctrine, the Communications Act, and the FCC's implementing regulations. It was a pretext for AT&T to flout the law and delay the District Court's adjudication of this action, and it should be rejected.[29]

A. Great Lakes Did Not Violate Section 201(b) of the Act Because Its Tariff Complied with the Commission's Existing Rules

1. AT&T's Request Is Barred by the Filed Tariff Doctrine

Great Lakes filed its Tariff F.C.C. No. 2 ("Tariff") on 15 days' notice, and thus it is deemed lawful under Section 204(a)(3) of the Act.[30] "Deemed lawful" protection bars AT&T

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[28] Answer ¶¶ 4, 55-57.

[29] Moreover, as AT&T bemoans, Great Lakes does not offer direct interconnection as a tariffed access service. The service AT&T demands (a direct connection) is therefore not a "telecommunications service"; that is, it is not offered by Great Lakes "for a fee directly to the public." *See* 47 U.S.C. § 153(53). When a carrier is not providing a "telecommunication service," it is not acting as a "common carrier." *See* 47 U.S.C. § 153(51) ("A telecommunications carrier shall be treated as a common carrier under this chapter ***only to the extent that it is engaged in providing telecommunications services.***") (emphasis added). And, because 47 U.S.C. § 206 only imposes liability against "common carriers" for violations of the Act, it necessarily follows that no claim for damages may be maintained against Great Lakes for violating Sections 201 and 202 because Great Lakes does not provide direct interconnection services on a common carrier basis. *See Glob. NAPs v. Bell Atlantic-New Jersey,* 287 F. Supp. 2d 532, 546-47 (D.N.J. 2003) (holding that when a carrier provides interconnection, it does not do so on a common carrier basis and, as a result, duties under the Act are inapplicable to the service and no claim for damages exists); *Level 3 Commc'ns, LLC v. Ill. Bell Tel. Co*., 4:13-CV-1080 CEJ, 2014 WL 414908, at *5-6 (E.D. Mo. Feb. 4, 2014) (adopting the reasoning in *Global NAPs*, and agreeing with the ILEC affiliates of AT&T that interconnection is not a common carrier service and that claims for violation of Sections 201 and 202 must be dismissed).

[30] *See* 47 U.S.C. § 204(a)(3); AT&T Ex. 8 (Tariff filed on January 11, 2015, with an effective date 15 days later on January 26, 2012).

from attacking – either here at the Commission or in court – the reasonableness of the rates, terms, or conditions of the Tariff on a retroactive basis.[31]

Moreover, the Tariff is tantamount to law. "Under [the filed rate] doctrine, once a carrier's tariff is approved by the FCC, the terms of the federal tariff are considered to be 'the law.'" *Iowa Network Servs., Inc. v. Qwest Corp.*, 466 F.3d 1091, 1097 (8th Cir. 2006) (quoting *Evanns v. AT&T Corp.*, 229 F.3d 837, 840 (9th Cir. 2000)) (alteration in original). "The filed rate doctrine is motivated by two 'companion principles' (1) preventing carriers from engaging in price discrimination as between ratepayers (the 'nondiscrimination strand') and (2) preserving the exclusive role of federal agencies in approving rates for telecommunications services that are 'reasonable' by keeping courts out of the rate-making process (the 'nonjusticiability strand'), a function that the federal regulatory agencies are more competent to perform." *N. Valley Commc'ns, LLC v. AT&T Corp*., 2009 DSD 10, ¶ 9, 659 F. Supp. 2d 1056, 1060 (quoting *Marcus v. AT&T Corp*., 138 F.3d 46, 58 (2nd Cir. 1998)). "The 'filed rate doctrine' forbids a regulated entity from charging a rate for its services other than the rate on file with the appropriate regulatory authority." *Crumley v. Time Warner Cable, Inc.*, 556 F.3d 879, 881 (8th Cir. 2009) (citing *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 (1981)). Accordingly, any complaint by AT&T about the rates, definitions, terms, or other conditions of Great Lakes' Tariff should be ignored as a matter of law.

AT&T's complaint for an off-tariff service at off-tariff prices flies in the face of the filed tariff doctrine. AT&T's first excuse for not paying Great Lakes' charges – that it should have been entitled to below-tariff pricing on "direct-trunk" transport services not even offered in the

[31] *See* 47 U.S.C. § 204(a)(3); *see also ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 410-12 (D.C. Cir. 2002) ("deemed lawful" tariffs are "conclusively presumed to be reasonable" and therefore "not subject to refunds"); *Connect America Fund Order*, 26 FCC Rcd. at 17888-89, ¶¶ 695-97 (declining to adopt some long distance carriers' proposal that access-stimulation-related tariffs be denied "deemed lawful" protection).

Tariff – is barred by the filed tariff doctrine, as is AT&T's complaint that Great Lakes' Tariff could have offered a direct-trunked transport service that may have been less expensive than Great Lakes' (or INS's) tariffed offering.[32]

AT&T knows this. For example, in *Telecom International America, Ltd. v. AT&T Corp.*, AT&T received summary judgment on claims seeking to collect certain tariffed charges disputed by a customer as unjust and unreasonable under the Communications Act.[33] The court there held that the filed tariff doctrine precluded it from entertaining those defenses, and awarded summary judgment to AT&T. *Id*. at 219 ("With respect to the issue of the reasonableness of the Shortfall Charges, I hold that the filed tariff doctrine and the doctrine of primary jurisdiction prevent me from entertaining such determinations."); *see also Fax Telecommunicaciones Inc. v. AT&T*, 138 F.3d 479, 491 (2d Cir. 1998) (holding that "the district court properly granted AT&T's motion for summary judgment dismissing these claims. In fact, any claim for damages by Fax based on AT&T's misrepresentations of its rates is barred by the filed rate doctrine, because an award of damages would lead to discrimination among AT&T customers and would improperly undermine the regulatory authority of the FCC. Finally, because the filed rate doctrine requires AT&T to charge rates and collect payments in accordance with the applicable filed tariff, the district court properly granted summary judgment for AT&T on its counterclaim seeking to collect those rates."). The same result must apply here: AT&T cannot make a retroactive attack on Great Lakes' deemed lawful Tariff by seeking an off-tariff service at off-tariff rates.

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[32] *See Firstcom, Inc. v. Qwest Corp*., 555 F.3d 669, 680 (8th Cir. 2009) ("Under the filed tariff doctrine, courts may not award relief (whether in the form of damages or restitution) that would have the effect of imposing any rate other than that reflected in the filed tariff."); *see also Iowa Network Servs.,* 466 F.3d at 1097.

[33] *Telecom Int'l Am., Ltd. v. AT&T, Corp.,* 67 F. Supp. 2d 189 (S.D.N.Y. 1999).

2. AT&T's Request for Direct-Trunked Transport Violates the Commission's CLEC Access Charge Rule

In addition, even if AT&T were not seeking a non-tariffed service at non-tariffed rates in violation of the filed tariff doctrine, AT&T's argument is also fatally flawed because it violates the FCC's benchmarking standard. AT&T argues that it should be able to order direct-trunked transport from Great Lakes at the rates listed in CenturyLink's access tariff. That is simply not the law.[34] AT&T's argument falls off the rails immediately by claiming that CLECs fail to comply with the Commission's CLEC access charge rule if they tariff and assess the ILEC's rate for "an inferior service," namely, the transport service that the Commission identifies by name as making up the "functional equivalent" of the ILEC's access service: tandem-switched transport.[35] AT&T is attacking the Commission's decision to make "tandem switched transport facility (per mile)" the appropriate and applicable transport service in 47 C.F.R. § 61.26. As shown below, AT&T is laboring under the false impression that, simply because ILECs *must* offer direct-trunked transport,[36] then the CLEC benchmark rule must replace what the Commission actually codified – "tandem switched transport facility (per mile)" – with a "very different" service that the FCC *never once* mentioned in the 147 paragraphs of the *Seventh Report & Order* or the rule itself.[37] Because AT&T's argument violates fundamental principles of law, logic, and language, it must be rejected.

In the *Seventh Report & Order* and its implementing regulation, 47 C.F.R. § 61.26, the FCC clearly defined the ILEC bundle of access services against which CLECs must benchmark

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34 AT&T Br. 14-19.

35 AT&T Br. 15.

36 47 C.F.R. § 69.112.

37 *In re Access Charge Reform*, First Report & Order, 12 FCC Rcd. 15982, 16064, ¶ 189 (1997) ("*First Report & Order*") ("Tandem-switched transport is functionally very different from direct-trunked transport because, by definition, the incumbent LEC must route an IXC's tandem-switched traffic through the tandem switch serving a particular end office.").

their rates, and "direct-trunk transport" is conspicuously absent from that list. *See* 47 C.F.R. § 61.26(a)(3)(i) (defining CLEC "switched exchange access services" to include the "functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: Carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); **tandem switched transport facility (per mile)**; tandem switching.") (emphasis added); *Seventh Report & Order*, 16 FCC Rcd. at 9946, ¶ 55 ("We seek to preserve the flexibility which CLECs currently enjoy in setting their access rates. Thus, in contrast to our regulation of incumbent LECs, our benchmark rate for CLEC switched access does not require any particular rate elements or rate structure; for example, it does not dictate whether a CLEC must use flat-rate charges or per-minute charges, so long as the composite rate does not exceed the benchmark."); *id.* at ¶ 55 n.126 (identifying "tandem switched transport" as the applicable transport service.). Accordingly, the plain language of the Commission's CLEC access charge rule expressly contemplates that "tandem switched transport" is the relevant ILEC transport service against which CLECs must benchmark their tariffed rates. There are several good reasons for this.

CLECs, unlike ILECs, are not required *as a matter of law* to offer a direct connection, tariffed or otherwise. The requirement simply does not exist, as AT&T has rightly acknowledged via Mr. Habiak, as noted above. Section 251(a) only requires CLECs to "interconnect directly ***or indirectly*** with the facilities and equipment of other telecommunications carriers."[38] The FCC has clearly held that "indirect connection . . . satisfies a telecommunications carrier's duty to

[38] 47 U.S.C. § 251(a) (emphasis added).

interconnect pursuant to section 251(a)," and that "**direct interconnection . . . is not required under section 251(a)**" for CLECs.[39]

Conversely, Congress has required ILECs like CenturyLink to offer direct interconnection. In 47 U.S.C. § 251(c), Congress explicitly adopted a direct interconnection requirement for ILECs, mandating that ILECs provide requesting telecommunications carriers interconnection "at any technically feasible point within the [ILEC's] network."[40]

Implementing Congress' differing interconnection standards for ILECs and CLECs, the Commission has expressly required ILECs to provide direct-trunked transport.[41] There is no similar requirement imposed on CLECs anywhere in the FCC's rules. Again, as noted above, the Commission's access-charge rule for CLECs defines a CLEC's "switched exchange access service" to include the "functional equivalent [] ILEC interstate exchange access service" typically denominated as "tandem switched transport facility,"[42] which, as explained further in Section I.A.4. *infra*, is a "very different" service than direct-trunked transport.[43]

Thus, both Congress and the Commission know how to mandate a direct connection, and clearly did not mandate it for CLECs. AT&T's argument would require the Commission to rewrite not only Great Lakes' deemed lawful Tariff, but also the Communications Act and 47 C.F.R. § 61.26(a)(3)(i). AT&T's request for the Commission to rewrite the Communications Act and the FCC's fifteen plus years of CLEC-access-charge rules should be rejected.

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39 *In re Implementation of the Local Competition Provisions in the Telecomm. Act of 1996*, 11 FCC Rcd. 15499, 15991, ¶ 997 (1996) ("*Local Competition Order*").

40 47 U.S.C. § 251(c); *accord Local Competition Order*, 11 FCC Rcd. at 15991, ¶ 997 (describing an *ILEC's* obligation to interconnect at all technically feasible points as a direct interconnection obligation).

41 47 C.F.R. § 69.112.

42 47 C.F.R. § 61.26(a)(3)(i).

43 *See also* Starkey Decl. ¶¶ 7-11.

3. None of AT&T's Sophistry Justifies Its Absurd and Unlawful Interpretation of 47 C.F.R. § 61.26

As shown above, the filed tariff doctrine, Section 251(a) of the Act, and the Commission's own CLEC-access-charge rules preclude AT&T's attempt to smuggle a direct-connection requirement into § 61.26. AT&T's "five reasons" for why Great Lakes' provision to AT&T of the very transport service the Commission requires it to provide – tandem switched transport – somehow violated the Act are all meritless.[44]

First, AT&T bemoans the omission of a direct-connection service in the Tariff that Great Lakes submitted in compliance with the *Connect America Fund Order*. Since neither Congress nor the Commission have *ever* required CLECs to offer a direct-connection service (via tariff or otherwise), Great Lakes was clearly free to omit it when it proceeded to file its new Tariff to comply with 47 C.F.R. § 61.26(g). That subsection of the FCC's rules effected one – and only one – change in the law: Great Lakes had to change the rates for its FCC-regulated "switched exchange access service," as defined in Section 61.26(a)(3)(i), to match those of a new ILEC, "the price cap LEC with the lowest switched access rates in the state." 47 C.F.R. § 61.26(g). That is the *only* change the Commission required of access-stimulating CLECs, and Great Lakes met that requirement.[45] Moreover, AT&T's complaints about the omission of the tariffed direct-connect service is clearly a ruse. *See* Answer ¶ 55 (reciting that AT&T *never*, in the six years in which Great Lakes' original tariff was operative, purchased (or even requested) a direct-connection from Great Lakes, despite sending many, many multiples of AT&T's alleged direct-connection-threshold volumes of traffic to AT&T for those many years); Nelson Decl. ¶ 3. Great Lakes' deemed-lawful Tariff includes no direct-connection service, and it had no need to. That

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44 AT&T Br. 15.

45 *See* AT&T Ex. 8 at Original Page No. 55.

its prior tariff identified such a service (that no IXC ever purchased) is irrelevant to AT&T's claim for new law.

Second, AT&T claims that Great Lakes' Tariff service is not "functionally equivalent to CenturyLink's, because … a direct connection is of tremendous functional importance to IXCs."[46] This is a *non sequitur*. The Commission has clearly ruled that "a competitive LEC that provides access to its own end-users is providing the functional equivalent of the services associated with the rate elements listed in section 61.26(a)(3) and therefore is entitled to the full benchmark rate."[47] The relevant transport rate element in Section 61.26(a)(3) is "tandem switched transport," so the Commission has already decided what is "of tremendous functional importance to" IXCs, and it is not direct-trunked transport.[48] As noted in its Answer, Great Lakes denies that it "forced AT&T to [pay] [*sic*] INS's per-minute transport rate to deliver the traffic to [Great Lakes]."[49] AT&T's allegations regarding Great Lakes' volumes relative to CenturyLink's

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46 AT&T Br. 16.

47 *Eighth Report & Order,* 19 FCC Rcd. at 9115, ¶ 15.

48 Footnote 73 of AT&T's Brief is likewise beside the point. The FCC's 2005 NPRM requested comment on a wide variety of issues regarding the agency's proposed overhaul of its intercarrier compensation regime. *See* AT&T Br. 16 n.73 (citing *In re Developing A Unified Intercarrier Comp. Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd. 4685 (2005)). The section that AT&T cites relates not to the interconnection requirements for CLECs, but rather to several *transit service* issues for certain *ILECs*. Indeed, the NPRM itself notes that the FCC sought comment on "the Commission's legal authority to impose transiting obligations," and "on the need for rules governing the terms and conditions for transit service offerings." *Id*. at ¶¶ 127, 131. The NPRM never states that CLECs should be required to provide IXCs with direct interconnections, and it never states that such a connection could ever be statutorily required. On the contrary, the FCC suggests at several points in the NPRM that CLECs, unlike ILECs, have a right to choose whether they will directly connect with an IXC. The FCC observes that CLECs "should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices." *Id*. at ¶ 128 (quoting *Local Competition Order*, 11 FCC Rcd. at 15991, ¶ 997). Senator Dorgan's comment is equally inapposite. Most obviously, it is merely a single Senator's passing remark at a hearing. Moreover, he was clearly referring to the fact that larger *IXCs* "have direct-trunk transport *through their own networks*." AT&T Br. 14 n.12 (emphasis added). Congress's choice is clearly stated in 47 U.S.C. § 251(a): CLECs (and IXCs for that matter) can choose indirect connections.

49 AT&T Br. 16-17; *see also* Answer ¶ 59.

are likewise irrelevant and incorrect for the reasons given in its Answer.[50] Moreover, they misstate the issue: AT&T's volumes to Great Lakes do not rise "because of the access stimulation activities of GLCC and is [*sic*] Free Calling Parties."[51] They rise because of *AT&T's* decision to privately market and sell its wholesale service to other carriers for calls specifically bound for Great Lakes,[52] and because of AT&T's customers' growing interest in the services offered by Great Lakes' conferencing and other service-provider customers.

Third, AT&T complains that it is unjust and unreasonable for Great Lakes to "demand[] that AT&T pay rates above CenturyLink's for a direct connection service akin to CenturyLink's."[53] The only evidence AT&T offers for that factual predicate is the similarly phrased conclusory statement in paragraph 16 of Mr. Habiak's declaration. This is a bizarre and meritless claim for at least three reasons. *One*, this is the same Mr. Habiak who has testified under oath on numerous occasions to the truthful proposition that CLECs have neither an obligation nor an incentive to provide an IXC with direct-connect service *at all*.[54] As this is AT&T's only "evidence" for this allegation, it is completely unreliable. *Two*, in addition to

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50 Answer ¶¶ 53-55. When AT&T was lobbying the Commission to outlaw access stimulation, it specifically raised the issue of access-stimulating LECs having significantly higher volumes than the state's largest ILEC, and the Commission nevertheless issued its new rule that access-stimulating CLECs can charge the benchmark rate of the price-cap ILEC with the lowest rate in the state via a deemed lawful tariff. *See Connect America Fund Order*, ¶ 689 n.1160 (FCC noting that "AT&T shows that 'rural' access stimulating competitive LECs in Iowa, Minnesota and South Dakota collectively are terminating three to five times as many minutes as the largest incumbent LEC operating in the same state"). AT&T's renewed arguments are, therefore, a collateral attack on the *Connect America Fund Order*, and thus barred by the Hobbs Act. 28 U.S.C. § 2342.

51 AT&T Br. 16.

52 Answer ¶ 58 & **Exhibit 25** (Macanaspie Dep. Ex. 21).

53 AT&T Br. 17.

54 *See, e.g.,* **Exhibit 1**, Rebuttal Testimony of John W. Habiak, on behalf of AT&T Corp., in Michigan Public Service Commission Case No. U-17619, at 4-5 (Sept. 11, 2014); *see also* **Exhibit 17**, ATT0002022-25 (J. Habiak testimony before the Michigan Public Service Commission, Sept. 23, 2014) ("LECMI is a CLEC, and they do not have an obligation to direct connect… for a CLEC, it's either through a tandem or through direct connect. It's not mandatory one way or the other.").

offering absolutely no evidence about whatever "demand" AT&T is complaining about, it has likewise offered no competent evidence that it was *in fact* "above CenturyLink's [rate]."[55] AT&T repeatedly intones the mantra that "rates do not exist in isolation," but they do not exist as an abstraction either. AT&T's Pollyanna "savings" calculation is based on the completely implausible assumption that CenturyLink has just been waiting around for AT&T to knock on its door and request the substantial amount of excess capacity that AT&T would need to get its calls 133 miles from Des Moines to Spencer, with no attempt whatsoever to prove that that highly unlikely assumption is actually true.[56] *Three*, AT&T is complaining that some unidentified pricing "demand" by Great Lakes for a CLEC service that the Commission *does not regulate* is too high (without actually saying what the demand was, when it was made, or why it was too high, among various other important details AT&T would need to establish to meet its burden of proof on this legally defective complaint).[57] As the Commission has (correctly) disavowed the authority to regulate the terms under which CLECs provide direct-trunked transport, if at all, *a fortiori* it cannot adjudicate a pricing dispute regarding that unregulated service.

Fourth, AT&T complains that by using the FCC-authorized CEA provider in Iowa – INS[58] – *and* being charged for Great Lakes' "tandem switched transport," the very transport service that the FCC has identified as the relevant transport service that provides the "functional equivalent" of CenturyLink's access service,[59] Great Lakes has somehow committed an "indirect violation of the Commission's benchmark rule."[60] The premise is, of course, completely

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55 AT&T Br. 17; *see* Starkey Decl. ¶¶ 5-6.
56 *See* Answer ¶¶ 55-59; *see also* Starkey Decl. ¶¶ 7-18.
57 AT&T Br. 17.
58 *In re the Application of Iowa Network Access Division*, 3 FCC Rcd. 1468 (1988).
59 47 C.F.R. § 61.26(a)(3)(i).
60 AT&T Br. 18.

backwards: *Great Lakes* does not require AT&T to use INS.[61] Moreover, the Commission has explicitly excepted CEA providers from the duty to provide direct-trunked transport.[62] Great Lakes cannot bear responsibility for the Commission's authorization of INS's CEA service for IXCs in Iowa or the Commission's decision to not require direct-trunked transport between CEA providers and subtending end offices, never mind AT&T's failure to negotiate coherently and in good faith with Great Lakes.[63] Great Lakes respectfully submits that complying with two FCC rules does not harm AT&T as a matter of law.

Finally, AT&T argues that dicta in the Commission's *Prairiewave* decision requires a CLEC to provide direct-trunked transport if an IXC requests it.[64] This turns *Prairiewave* on its head. First, *Prairiewave* presented the Commission with the question of whether CLECs can charge IXCs "for both tandem and end office switching when these functions are provided by separate switches." 23 FCC Rcd. at 2564, ¶ 26. That has nothing to do with this case; as AT&T is wont to highlight, Great Lakes "owns and operates its only switch in Spencer." Compl. ¶ 24. Thus, *Prairiewave* is irrelevant because this is not about whether AT&T can bypass *Great Lakes'* tandem switch; AT&T wants to bypass *INS's* tandem switch. And the FCC merely concluded that it contemplates that the CLEC would permit "**an IXC to install** direct trunking from the IXC's point of presence to the competitive LEC's end office" to preserve the CLEC's right to bill for both the tandem switching and the end office switching.[65] *Prairiewave* is inapposite. But the Commission clearly contemplated that the "**IXC [will] install** direct

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61 Answer ¶¶ 56-59.

62 47 C.F.R. § 69.112(i).

63 Answer ¶¶ 56-59.

64 AT&T Br. 18-19 (citing *In re Access Charge Reform, Prairiewave Telecomm., Inc.*, 23 FCC Rcd. 2556 (2008) ("*Prairiewave*")).

65 *Prairiewave*, 23 FCC Rcd. at 2565, ¶ 27 (emphasis added).

trunking."[66] Here, however, AT&T has not offered any competent evidence establishing that it was either willing or able to actually install "direct trunking" to Great Lakes' end office switch. It has merely opened CenturyLink's tariff to see what CenturyLink would charge if the dozens of DS3s needed to get AT&T's traffic from its POP to Spencer actually existed.[67] Thus, AT&T hasn't installed, or even attempted to install, *anything*, except meritless legal arguments as an impediment to Great Lakes' collection action.

In brief, each and every one of AT&T's five reasons in support of Count I concerning Great Lakes' alleged failure to provide AT&T with a direct-connect service are defective as a matter of law and fact. Great Lakes is following the Commission's clear, long-standing law, and has not violated Section 201(b).

4. The Commission's Use of the Words "Include" and "Typically" Does Not Turn "White" into "Black," as AT&T Claims

AT&T's next act of linguistic sorcery involves perverting the Commission's use of "include" and "typically" in Section 61.26 to argue that, when the Commission codified "tandem switched transport," it actually intended to include the "very different"[68] service "direct-trunked transport."[69] AT&T's self-serving, tortured reading of Section 61.26(a)(3)(i) has *never* been embraced by the Commission or any court in the country. Indeed, Great Lakes' research strongly suggests that AT&T is the first – and only – party to ever advance such an unnatural interpretation. Certainly AT&T cites nothing to support its interpretation. That it took AT&T *fifteen years* to cook up this absurd construction of the regulation is telling.

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66 *Id.*

67 Answer ¶ 59; Starkey Decl. ¶¶ 14-16.

68 *First Report & Order*, 12 FCC Rcd. at 16064, ¶ 189 ("Tandem-switched transport is functionally very different from direct-trunked transport because, by definition, the incumbent LEC must route an IXC's tandem-switched traffic through the tandem switch serving a particular end office.").

69 AT&T Br. 20-22.

AT&T pretends to rely on "basic principles of statutory and regulatory construction" to support its tortured reading of the regulation.[70] AT&T distorts those basic principles too, and they collapse under the weight of AT&T's unnatural reading of Section 61.26(a)(3)(i). "[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992). "Like statutes, administrative rules are to be construed to effectuate the intent of the enacting body. To this end, courts look first to the plain language of the statute or rule and the legislative purpose behind its enactment." *Rucker v. Wabash R. Co.*, 418 F.2d 146, 149–50 (7th Cir. 1969) (internal citations omitted). As noted above, the Commission was clear in its *Seventh Report & Order* and the implementing regulation that the purpose was to create a "bright line" rule that CLECs could easily follow to ensure that their tariffed switched access rate was just and reasonable and not subject to self-help withholding by IXCs.

By advocating that the Commission should read the "very different" "direct-trunked transport" service into the list of rate elements provided for in Section 61.26(a)(3)(i), AT&T improperly seeks to inject ambiguity where none exists. One must assume that the Commission meant what it said in Section 61.26 and would not draft an ambiguous, internally inconsistent regulation. If the FCC meant to include "direct trunked transport" within the definition of a CLEC's "switched exchange access services," it would have stated that when crafting the rule, because it is undisputed that the Commission knows how to require direct-trunked transport.[71] "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely

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[70] AT&T Br. 21.

[71] *See* 47 C.F.R. § 69.112; *cf.* 47 C.F.R. § 69.2(oo) (Definitions, "Direct-trunked transport") *with id.* § 69.2(ss) (Definitions, "Tandem-switched transport").

in the disparate inclusion or exclusion.'"[72] Indeed, as the Commission recently observed, it "is a well-understood rule of statutory construction that, when Congress includes a term in one portion of the statute but not another, it did so intentionally."[73] The Commission is obviously familiar with "direct-trunked transport," and knows how to require it of LECs, so the omission of the concept in Section 61.26 of its rules must be purposeful, particularly when it *did* include the "very different" form of "tandem switched transport."[74]

Thus, the Commission's use of "shall include" does not, as AT&T suggests, indicate that the Commission actually meant "including, but not limited to."[75] Rather, the Commission was trying to accommodate two principles: first, it was sensitive to the CLECs' concerns that they did not necessarily provision or rate their access services in the way that ILECs had. *Seventh Report & Order*, 16 FCC Rcd. at 9946, ¶ 55 ("We seek to preserve the flexibility which CLECs currently enjoy in setting their access rates. Thus, in contrast to our regulation of incumbent LECs, our benchmark rate for CLEC switched access does not require any particular rate elements or rate structure …. Rather it is based on a per-minute cap for all interstate switched access service charges."). Second, it was also aware of the fact that ILEC nomenclature was not consistent. *Id*. ("Using traditional ILEC nomenclature, it appears that most CLECs seek compensation for the same basic elements, however precisely named: (1) common line charges; (2) local switching; and (3) transport."). But the Commission was clear what the nature of the transport service was: "tandem switched transport." 47 C.F.R. § 61.26(a)(3)(i).

Finally, the Commission's use of the *singular* noun "rate" – as in "full benchmark rate" – makes absolutely no sense if, as AT&T claims, the Commission actually thought that one IXC

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72 *Brown v. Gardner*, 513 U.S. 115, 120 (1994) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1993)).

73 *In re Numbering Policies for Modern Commc'ns*, 30 FCC Rcd. 6839, 6879 ¶ 80 (2015).

74 *First Report & Order*, 12 FCC Rcd. at 16064, ¶ 189.

75 AT&T Br. 21-22.

might be entitled to the "direct-trunked transport rate" based on its volumes, while another IXC might purchase the "tandem-switched transport rate" based on its lower volumes. 47 C.F.R. § 61.26(c) ("The benchmark **rate** for a CLEC's switched exchange access services will be the rate charged for similar services by the competing ILEC.") (emphasis added).[76]

B. The Relief Sought by AT&T Cannot be Granted Because It Would Require the Commission to Make a New Legislative Rule Without Following the Notice-and-Comment Procedures Required by the Administrative Procedure Act

The Commission should decline AT&T's invitation to violate the Administrative Procedure Act ("APA") by using this adjudication to issue a new legislative rule requiring CLECs (or at least those with "high" traffic volumes in AT&T's estimation) to offer tariffed direct-trunked transport service. AT&T asks the Commission to conclude that Great Lakes' refusal to provide AT&T a direct connection is an "unjust and unreasonable" practice in violation of Section 201(b) of the Act. As shown above, though, AT&T is effectively asking the Commission to *amend* its rules applicable to CLECs by adding a direct-connect requirement and revising its benchmarking rule to include a required tariffed access rate element for direct-trunked transport. Simply put, the FCC cannot grant AT&T the relief it ultimately seeks under

[76] AT&T suggests that its tortured reading of the CLEC-access-charge rule is supported by the Commission's "purpose" in lowering access charges for access-stimulating LECs in the *Connect America Fund Order*. AT&T Br. 27. The Commission achieved that result by dramatically reducing Great Lakes' prior access rates, which mirrored the rates in NECA band 8 by operation of the rural exemption, down to CenturyLink's rates. *Connect America Fund Order,* ¶ 690 ("Benchmarking to the lowest price cap LEC interstate switched access rate in the state will reduce rate variance among states and will significantly reduce the rates charged by competitive LECs engaging in access stimulation, even if it does not entirely eliminate the potential for access stimulation."). The Commission was clear that it was retaining its benchmark rule. *Id*. at ¶ 692 ("Our benchmarking approach addresses access stimulation within the parameters of the existing access charge regulatory structure."). Moreover, the Commission *added* subsection (g) to Section 61.26 to establish the new benchmark rate for access-stimulating LECs; it did not change one letter in Section 61.26(a)(3)(i), so the idea that the Commission's "purpose" in creating 61.26(g) silently rewrote 61.26(a)(3)(i) is absurd on its face. Surely the Commission did not eliminate the entire system of CEA providers and create a direct-connect obligation on CLECs via such a silent, elliptical process.

Count I—prospective, substantive, legislative changes to the agency's rules—without first following the APA's procedures for public notice and an opportunity for comment.[77]

1. This Adjudication is Not a Proper Forum for the Commission to Impose a Direct-Connect Requirement, Which Bears the Hallmarks of a Rulemaking

While the Commission may, in limited circumstances, announce new rules through adjudication rather than rulemaking,[78] an adjudication that is not subject to the APA's notice-and-comment procedures is not an appropriate forum for the FCC to implement a new legislative rule.[79] Thus, there are circumstances under which the blurred line between adjudication and rulemaking can be crossed, and an agency's reliance on adjudication to set forth a new substantive rule may be an abuse of its administrative discretion.[80] While courts give deference

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[77] The APA sets forth a three-step notice-and-comment procedure that agencies must follow before engaging in rulemaking. *See* 5 U.S.C. § 553(b) & (c) (describing procedures to include: (i) publishing notice of proposed rule making in the Federal Register, "unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law;" (ii) "giv[ing] interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation;" and (iii) "[a]fter consideration of the relevant matter presented," "incorporate[ing] in the rules adopted a concise general statement of their basis and purpose").

[78] *See, e.g.*, *N.L.R.B. v. Bell Aerospace Co. Div. of Textron*, 416 U.S. 267, 294 (1974) (observing that an agency "is not precluded from announcing new principles in an adjudicative proceeding" and "the choice between rulemaking and adjudication lies in the first instance within the Board's discretion").

[79] *See* 5 U.S.C. §553(b); *Allina Health Servs. v. Burwell*, No. CV 14-1415 (GK), 2016 WL 4409181, at *6 (D.D.C. Aug. 17, 2016) ("The APA requires notice and comment when agencies implement new legislative rules."). The Commission is authorized to clarify or reconsider its rules, but such authority is constrained by the APA. 47 C.F.R. § 1.3 ("The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, *subject to the provisions of the Administrative Procedure Act* and the provisions of this chapter.") (emphasis added).

[80] *See Bell Aerospace Co.,* 416 U.S. at 294 ("[T]here may be situations where [an agency's] reliance on adjudication would amount to an abuse of discretion."); *MacLean v. Dep't of Homeland Sec.,* 543 F.3d 1145, 1151 (9th Cir. 2008) ("An agency adjudication may require a notice and comment period if it constitutes de facto rulemaking that affects the rights of broad classes of unspecified individuals.") (internal quotation marks and citations omitted); *Miguel–Miguel v. Gonzales,* 500 F.3d 941, 950 (9th Cir. 2007) ("Of course, in certain circumstances an agency may abuse its discretion by announcing new rules through adjudication rather than

to an agency's characterization of its own action as either adjudication or rulemaking, they also consider the "ultimate product of the agency action."[81] As demonstrated below, because the decision AT&T seeks from the Commission would bear the hallmarks of a legislative rule, the Commission cannot properly proceed by adjudication to announce a new requirement for CLECs to offer tariffed direct-trunk transport service.

First, if the FCC were to determine that Great Lakes is required to offer direct-trunked transport as a tariffed transport service, it would have the effect of a "rule" under the APA's broad definition: an "agency statement of general … applicability and future effect designed to … prescribe law" applicable to any CLEC (or perhaps just those with "high" traffic volumes).[82] Practically speaking, if the Commission were to conclude that Great Lakes' refusal to offer AT&T a direct connection to its network is an unjust and unreasonable practice under Section 201(b), it would be, in effect, providing its "approval or prescription for the future" of the rates, services, and facilities that all similarly situated CLECs must offer IXCs.[83] Although not determinative of whether the APA's notice-and-comment requirements apply, a decision in AT&T's favor clearly would meet the APA's definition of a "rule."

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through rulemaking, such as when the rule operates retroactively and disturbs settled expectations.") (citing cases).

[81] *City of Arlington, Tex. v. FCC*, 668 F.3d 229, 240 (5th Cir. 2012), *aff'd,* 133 S. Ct. 1863, 185 L. Ed. 2d 941 (2013).

[82] 5 U.S.C. § 551(4) & (5) (defining "rule making" as an "agency process for formulating, amending, or repealing a rule," which is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing"); *see also id.* § 551(6) & (7) (defining "adjudication" as an "agency process for the formulation of an order," which is "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing").

[83] *See id.*

Second, the pervasive policy arguments underlying AT&T's Complaint expose its ultimate goal: to achieve, through a Section 208 complaint invoking Section 201(b), new rules of prospective application so that AT&T can get what it wants from CLECs going forward (including bypassing any CEA or tandem provider it pleases[84]). "Retroactivity is the norm in agency adjudications."[85] The more an agency's action tends to have a prospective, as opposed to retroactive, impact on law and policy, the more it starts to resemble a rulemaking.[86] "In contrast to an informal adjudication or a mere policy statement, which 'lacks the firmness of a [prescribed] standard,' an agency's imposition of requirements that "affect subsequent [agency] acts' and have a 'future effect' on a party before the agency triggers the APA notice requirement."[87]

The FCC's Section 208 complaint process is intended to result in an agency determination of lawfulness and retroactive compensation for harm arising from violations of the Communications Act.[88] This proceeding is not merely an adjudication with some hypothetical chance of a collateral impact on future telecommunications law and policy. Granting AT&T's request for new law on the direct-connect issue in this case would undoubtedly have far-reaching and costly implications for CLECs, who would be forced to change the transport services they offer and amend their current deemed lawful tariffs, or risk being hauled before the Commission in a complaint proceeding by an IXC looking to get a better deal.

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84 *See also* **Exhibit 21** (highlighting AT&T's policy of not pursuing CLEC direct-connect "savings opportunities" in **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

85 *Am. Tel. & Tel. Co. v. FCC*, 454 F.3d 329, 332 (D.C. Cir. 2006).

86 "Adjudication *deals* with what the law was; rulemaking deals with what the law will be." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 221 (1988) (emphasis in original).

87 *Sprint Corp. v. FCC*, 315 F.3d 369, 373 (D.C. Cir. 2003) (quoting *Sugar Cane Growers Coop. v. Veneman*, 289 F. 3d 89, 95-96 (D.C. Cir. 2002)) (alteration in original).

88 47 U.S.C. § 208.

Finally, this Section 208 formal complaint proceeding, which arose from a private billing dispute, is not an appropriate forum for the Commission to impose new, prospective obligations on a broad class of CLECs that would also materially impact CEA and other tandem providers. A "classic case of agency adjudication" involves "decisionmaking concerning *specific persons*, based on a determination of *particular facts* and the application of general principles to those facts."[89] "While the line dividing [rulemaking and adjudication] may not always be a bright one," there is "a recognized distinction in administrative law between proceedings for the purpose of promulgating policy-type rules or standards, on the one hand, and proceedings designed to adjudicate disputed facts in particular cases on the other."[90]

In making its case for a new direct-connect requirement, AT&T does not rely on facts particular to the business dispute between AT&T and Great Lakes. Instead, AT&T urges that Great Lakes is "abusing" the "bottleneck monopoly power" supposedly possessed by all CLECs - power that AT&T claims the FCC's benchmark rule was designed to constrain (never mind that *all* LECs, in the same sense, provide the final facility to their end user).[91] It is clear that what AT&T really wants is for the FCC to impose a new substantive duty, on an industry-wide basis, for CLECs to offer direct-trunked transport service. Great Lakes has not engaged in some novel practice that the FCC has not yet had occasion to review. Because AT&T's arguments hinge not on particular facts specific to the parties, but rather on policies with broad implications for all CLECs and CEA and tandem providers, or at least those with "high" traffic volumes, it is clear that AT&T is improperly requesting a substantive rule change through adjudication.

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89 *Harborlite Corp. v. I.C.C.*, 613 F.2d 1088, 1093 (D.C. Cir. 1979) (emphasis added); *see also Yesler Terrace Cmty. Council v. Cisneros*, 37 F.3d 442, 448 (9th Cir. 1994) (observing that one of the principal distinguishing characteristics is that "adjudications resolve disputes among specific individuals in specific cases, whereas rulemaking affects the rights of broad classes of unspecified individuals").

90 *United States v. Florida E. Coast Ry. Co.*, 410 U.S. 224, 245 (1973).

91 *See* AT&T Br. 15-18.

2. The Commission Should Decline AT&T's Invitation to Invoke Its Legislative Authority by Amending the Current Legislative Rules that Govern CLECs' Access Charges

It is well settled that the APA "does not require that all the specific applications of a rule evolve by further, more precise rules rather than by adjudication."[92] But AT&T is not asking the agency merely to refine the existing law applicable to CLECs' tariffed access charges (through an interpretive rule); it is asking the agency to *change* them (through a legislative rule). To that end, "judicial hackles are raised when an agency alters an established rule defining permissible conduct which has been generally recognized and relied on throughout the industry that it regulates."[93]

Thus, although the Commission's authority under Section 201(b) allows it to adjudicate claims that a carrier's rates or practices are "unjust and unreasonable," this general grant of authority cannot trump the specific terms of other legislative rules promulgated by the agency. The D.C. Circuit's guidance on this issue is instructive:

> Underlying these general principles is a distinction between rulemaking and a clarification of an existing rule. Whereas a clarification may be embodied in an interpretive rule that is exempt from notice and comment requirements, 5 U.S.C. § 553(b)(3)(A), *see Am. Mining Cong. v. Mine Safety & Health Admin.,* 995 F.2d 1106, 1109 (D.C.Cir.1993), **new rules that work substantive changes in prior regulations are subject to the APA's procedures.** Thus, in *National Family Planning & Reproductive Health Ass'n v. Sullivan,* the court described as "a maxim of administrative law" the proposition that, " '[i]f a second rule repudiates or is irreconcilable with [a prior legislative rule], the second rule must be an amendment of the first; and, of course, an amendment to a legislative rule must itself be legislative.' " 979 F.2d 227, 235 (D.C.Cir.1992) (quoting Michael Asimow, *Nonlegislative Rulemaking and Regulatory Reform,* 1985 Duke L.J. 381, 386); *see also Am. Mining Cong.,* 995 F.2d at 1109. The Commission proceedings at issue illustrate the distinction. In the *First Reconsideration Order,* the Commission clarified its initial rule by providing a definition of the phrase

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92 *Shalala v. Guernsey Mem'l Hosp.*, 514 U.S. 87, 96 (1995).

93 *AT&T Co. v. FCC*, 454 F.3d 329, 332 (D.C. Cir. 2006) (internal quotations omitted) (emphasizing the critical distinction between agency decisions that substitute new law for settled law and those that merely apply existing law, the latter of which carry a "presumption of retroactivity").

> "facilities-based carriers." 11 F.C.C.R. at 21,277 ¶ 92 (1996). Although definitions may vary in a way that would trigger the APA notice requirements, *see Nat'l Family Planning,* 979 F.2d at 235 (citing *Homemakers North Shore, Inc. v. Bowen,* 832 F.2d 408, 412 (7th Cir.1987)), the Commission's clarification in the *First Reconsideration Order* merely illustrated its original intent. By contrast, **when an agency changes the rules of the game—such that one source becomes solely responsible for what had been a dual responsibility and then must assume additional obligations, as occurred in the Commission's *Second Reconsideration Order*—more than a clarification has occurred. To conclude otherwise would intolerably blur the line between when the APA notice requirement is triggered and when it is not**.[94]

A critical factor distinguishing interpretive rules from legislative rules is the extent to which duties and rights already exist in the law. Thus, a rule is legislative when it "effectively amends a prior legislative rule," or is derived not based on specific statutory provisions but from the "agency's power to exercise its judgment as to how best to implement a general statutory mandate."[95] "A statute or legislative rule that actually establishes a duty or a right is likely to be relatively specific (and the agency's refinement will be interpretive), whereas an agency's authority to create rights and duties will typically be relatively broad (and the agency's actual establishment of rights and duties will be legislative). But the legislative or interpretive status of the agency rules turns not in some general sense on the narrowness or breadth of the statutory (or regulatory) term in question, but on the prior existence or non-existence of legal duties and rights."[96]

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94 *Sprint*, 315 F.3d at 374 (emphasis added).

95 *Am. Mining Cong. v. Mine Safety & Health Admin.*, 995 F.2d 1106, 1110 (D.C. Cir. 1993). Here, the D.C. Circuit established a four-factor test focused on the "legal effect" of the rule: "(1) whether in the absence of the rule there would not be an adequate legislative basis for enforcement action or other agency action to confer benefits or ensure the performance of duties, (2) whether the agency has published the rule in the Code of Federal Regulations, (3) whether the agency has explicitly invoked its general legislative authority, or (4) whether the rule effectively amends a prior legislative rule. If the answer to any of these questions is affirmative, we have a legislative, not an interpretive rule." *Id.* at 1112.

96 *Id.* at 1110.

This critical distinction between interpretative and legislative rules is borne out in challenges to prior actions taken by the agency. For example, in *AT&T Co. v. FCC*, AT&T sought judicial review of an FCC ruling, made through adjudication, that AT&T's enhanced prepaid calling card service was properly classified as a telecommunications service, not an information service.[97] The D.C. Circuit rejected AT&T's argument that the FCC improperly made its ruling retroactive, clarifying the distinction between new law and new applications of existing law.[98] The court found that the FCC's decision "did not change settled law," as AT&T could not "point … to a settled rule on which it reasonably relied."[99] The court concluded that, in this classic example of adjudication, the agency made a "highly fact-specific, case-by-case" determination about the regulatory classification of a service that was "before the Commission for the first time" and made a new policy for a new situation.[100]

In *Conference Group, LLC v. FCC*, petitioners asserted an APA challenge to the FCC's ruling on the USF contribution obligations of InterCall, Inc., an audio bridging provider, arguing that the agency converted USAC's decision into an industry-wide legislative rule without adequate notice or comment.[101] There, the FCC's ruling had affirmed USAC's determination that InterCall's audio bridging services are "toll teleconferencing services" subject to direct USF contribution obligations.[102] Concluding that the FCC's interpretive ruling did not require notice-and-comment rulemaking, the court emphasized that (i) the decision had "none of the hallmarks

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97 454 F.3d 329 (D.C. Cir. 2006).

98 *See id.* at 331-34.

99 *Id.* at 332.

100 *Id.* at 332-34 (noting that "AT&T might gain some support if the Commission's precedents clearly pointed toward the opposite result").

101 *Conference Grp., LLC v. FCC*, 720 F.3d 957 (D.C. Cir. 2013) (In response to the audio bridging provider's petition for review of USAC's decision that its services are "toll teleconferencing services" subject to direct USF contribution obligations, the FCC issued an order agreeing with USAC as to the regulatory classification of audio bridging services.).

102 *See id.*

of legislative rulemaking that this court has identified, such as amending a prior legislative rule or explicitly invoking the Commission's general legislative authority;" (ii) the agency "relied primarily on the statutory definitions of 'telecommunications' and 'information service' as interpreted in its Universal Service Orders and implementing regulations;" and (iii) the agency also relied on relevant precedent related to regulatory classification.[103]

Applying the principles to this proceeding, it is clear that an agency determination that Great Lakes was required to offer AT&T tariffed direct-trunked transport service at the benchmark rate could not possibly be considered an "interpretive" rule. Reading a direct-connect requirement into the CLEC access charge rules - which is already predicated on a "very different" tandem switched transport service – would change settled law upon which Great Lakes and other CLECs have reasonably relied. Here, the FCC has already promulgated rules - after appropriately providing the opportunity for public participation - resolving industry debate over which services make up a CLEC's benchmark rate. Yet AT&T asks the Commission to change the law governing the services a CLEC must provide IXCs via tariff by adding direct-trunk transport as a required rate element of transport service under Section 61.26(a)(3).

As highlighted above, CLECs, unlike ILECs, are not required by Congress or the Commission to offer a direct connection.[104] Thus, if the FCC were to impose a new duty on Great Lakes, a CLEC, to interconnect directly with AT&T, that could not possibly be considered an "interpretive rule," as it would be patently inconsistent with Section 251 of the Communications Act and the FCC's prior interpretations thereof.

Moreover, such a ruling could not fairly be construed as an interpretation of the Commission's 15-year-old benchmark rule, as it plainly contradicts the regulation's plain text

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103 *Id.* at 965.

104 47 U.S.C. § 251(c); 47 U.S.C. § 251(a); 47 C.F.R. § 69.112.

and the FCC's implementing orders. The FCC has already addressed complaints from AT&T and other IXCs, under APA-complaint rulemaking proceedings, about the practice of access stimulation by regulating the tariffed rates that IXCs like AT&T must pay CLECs like Great Lakes. Section 61.26 clearly sets forth the "bright-line" rule governing the rates CLECs can charge IXCs for access service pursuant to tariff. Section 61.26 also defines the bundle of services that make up a CLEC's access service as specifically including "tandem switched transport" service, which Great Lakes has been providing AT&T; the rule does *not* include direct-trunk transport service, which AT&T now wants the Commission to write *into* the rule.[105] Writing in such a requirement would be inherently legislative, not interpretive, and it cannot be done by adjudication.

Finally, policy and practical considerations weigh against converting this complaint proceeding into a rulemaking. The APA's notice requirement "does not simply erect arbitrary hoops through which federal agencies must jump without reason," but rather it "improves the quality of agency rulemaking by exposing regulations to diverse public comment, ensures fairness to affected parties, and provides a well-developed record that enhances the quality of judicial review."[106] Circumventing the APA's notice-and-comment procedures to impose a direct-connect requirement on CLECs via Section 201(b) would deprive the Commission of the same diverse public comments from affected parties, such as the nation's FCC-approved CEA providers, that it enjoyed when developing and promulgating its existing access charge rules. More troubling for the agency, issuing such a rule via adjudication would invite a Section 201(b)

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[105] 47 C.F.R. § 61.26(a)(3)(i) (defining CLEC "switched exchange access services" to include the "functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: … local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching").

[106] *Sprint*, 315 F.3d at 373 (D.C. Cir. 2003) (internal citations and quotations omitted).

free-for-all of complaints against CLECs with "high" traffic volumes that do not currently offer tariffed direct-trunked transport service. Respectfully, the Commission should decline AT&T's invitation to violate the APA.

In brief, the Commission should not, and respectfully cannot, read a direct-connect requirement into 47 C.F.R. § 61.26.

II. GREAT LAKES' HIGH-VOLUME CUSTOMERS ARE END USERS

A. Great Lakes' High-Volume Customers Are End Users, i.e., Customers to Whom It Offers Its Telecommunications Services For a Fee

1. AT&T Improperly Restricts the Language of the Tariff and the Act

In its next exercise in self-serving, tortured interpretation of legal texts, AT&T's fallback position is to attack the end user status of Great Lakes' high-volume customers in an effort to receive free service from Great Lakes. The misdirection begins immediately with AT&T's claim that one must purchase an "*interstate* telecommunications service" to qualify as an "end user."[107] That is not what the Commission held in *Northern Valley*,[108] and not what Great Lakes' Tariff actually says. In the Commission's Order on Reconsideration in the *Northern Valley* case, the Commission reiterated its initial holding that an "end user" is anyone who is offered the LEC's "telecommunications service" – no other adjectives – "for a fee":

> [U]nder the Commission's ILEC access charge regime, an "end user" is a **customer of a service that is offered for a fee**. The Commission provided no alternative definition for "end user" when stating, in the *CLEC Access Charge Reform Reconsideration Order*, that a CLEC provides the functional equivalent of ILEC services [within the meaning of rule 61.26] only if the CLEC provides access to its "own end users." Accordingly, that order establishes that **a CLEC's access service is functionally equivalent only if the CLEC provides access to customers to whom the CLEC offers its services *for a fee***.

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107 AT&T Br. 24.

108 *Qwest Commc'ns Co. v. N. Valley Commc'ns*, 26 FCC Rcd. 8332 (2011) ("*N. Valley I*"), *recon denied*, 26 FCC Rcd. 14520 (2011) ("*N. Valley II*"), *aff'd*, *N. Valley Commc'ns v. FCC*, 717 F.3d 1017 (D.C. Cir. 2013).

> The *Order* required Northern Valley to "file tariff revisions ... to provide that interstate switched access service charges will apply only to the origination or termination of calls to or from an individual or entity to whom Northern Valley offers **telecommunications services** *for a fee*."

N. Valley II, 26 FCC Rcd. at 14521-22, ¶ 4; *see also N. Valley I*, 26 FCC Rcd. at 8337, ¶ 10 ("the Commission defines 'end user' to mean a customer of a 'telecommunications service,' which, under the statute, is 'the offering of telecommunications for a fee.'"). On reconsideration, the Commission affirmed its holding, but never once held that the fee *had* to be for an *interstate* telecommunications service:

> **We therefore construe "end user" as used in rule 61.26 to mean an individual or entity to whom telecommunications are offered for a fee**. Further, rule 61.26 requires that tariffed CLEC access charges be for services that are the "functional equivalent" of ILEC access services. In the *CLEC Access Charge Reform Reconsideration Order*, the Commission clarified that a CLEC provides the "functional equivalent" of ILEC access charges within the meaning of rule 61.26 only if it provides access to its "end user." Therefore, as the *Order* correctly concludes, **a CLEC's access service is " functionally equivalent" only if the CLEC provides access to its end user, or *paying* customer.**[109]

Thus, at no point has the Commission confined end users to those customers offered only *interstate* telecommunications service for a fee, as AT&T now claims.[110]

This is entirely consistent with the "longstanding policy of the Commission that **users of the local telephone network for interstate calls** should be responsible for a reasonable portion of the costs that they cause."[111] The Commission further reasoned that "construing 'end user' to mean a customer of a telecommunications services offered for a fee is consistent with the Commission's goal of ensuring that neither IXCs nor end users are charged an unfair share of the

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[109] *N. Valley II*, 26 FCC Rcd. at 14524, ¶ 8 (emphasis added in bold).

[110] Indeed, the Commission agreed with Northern Valley that it did not require CLECs to charge a Subscriber Line Charge ("SLC"), the one conceivably interstate service a local exchange customer may purchase from their CLEC: "The *June 7 Order* does not require CLECs to impose the SLC, and therefore does not conflict with Commission precedent on that point." *Id.* at 14529, n.38.

[111] *Id*. at ¶ 11 (emphasis added).

LEC's costs in transporting interstate calls."[112] Accordingly, both the Commission's language and underlying policy show that the Commission expects end "users of the *local* telephone network" to contribute to the LEC's costs incurred in carrying interstate calls. Like any local exchange customer who *receives* interstate toll calls, they benefit from, but do not pay for, the toll service, but they are nevertheless expected to contribute to the LEC's costs in maintaining that local network that *also* supports the provision of interstate services. As shown below, those conditions are clearly met here.

Like the Commission's holdings in *Northern Valley*, Great Lakes' Tariff also tracks the language of "end user" – a "Customer of an Interstate or Foreign Telecommunications Service" – in the Commission's rules,[113] and the language of "telecommunications service" - "the offering of telecommunications for a fee" - in the Act.[114] Congress did not define the entire phrase "Interstate or Foreign Telecommunications Service." It defined "telecommunications service" to mean "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."[115] It did, however, define an "interstate communication."[116] Naturally, "interstate" there means a call from one state to another: "The term 'interstate communication' or 'interstate transmission' means communication or transmission (A) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia…."[117]

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112 *Id*.
113 47 C.F.R. § 69.2(m).
114 47 U.S.C. § 153(53).
115 *Id.*
116 47 U.S.C. § 153(28).
117 *Id*.

Thus, to determine whether a communication or service is interstate, one looks to the location of the calling and called parties. The Commission follows Congress's common-sense approach to determine whether a given service is interstate. "The Commission has traditionally determined the jurisdictional nature of a service by applying an 'end to end' analysis based upon the endpoints of a communication, 'beginning with the inception of a call to its completion.'"[118]

Great Lakes' customers' traffic is overwhelmingly interstate in nature, and *all* of the disputed charges relate to this interstate traffic. *See, e.g.,* AT&T Ex. 6, Nelson Dep. 39:4-5 ("Less than one percent of our traffic is intrastate," and affirming that Great Lakes does not even assess charges on the *de minimis* amount of intrastate traffic it terminates); AT&T Ex. 13, Toof Report Ex. DIT-7, Ex. DIT-8, Ex. DIT-9 (quantifying the volume of "Interstate MOUs" [minutes of use] delivered by AT&T to Great Lakes as part of his damages calculations on behalf of AT&T, showing only interstate MOUs); AT&T Br. 34 n.137. Accordingly, common sense, plain English, Congress, and the FCC all agree that Great Lakes' conferencing customers "receive[] an interstate or foreign Telecommunications service transmitted … from [AT&T] across [Great Lakes'] Network." AT&T Ex. 8, Tariff Original Page No. 7.

Neither the Commission nor Great Lakes' Tariff support AT&T's coupling of the *fee* with the *interstate* telecommunications service. To be an "end user," the customer must "send[] or receive[] an interstate or foreign Telecommunications service," and "pay a fee to the Company for telecommunications service."[119] Thus, to complete Great Lakes' burden of proof

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[118] *In re Int'l Settlements Policy Reform*, 26 FCC Rcd. 7233, 7251 (2011) (quoting *Petition for Declaratory Ruling That Pulver.com's Free World Dial-Up is Neither Telecommunications Nor a Telecommunications Service*, 19 FCC Rcd. 3307, 3320-21 (2004)).

[119] AT&T Ex. 8, Orig. Pages 7-9. AT&T attempts to support its revision of the Tariff by referencing what Mr. Nelson agree[d] the Tariff "says." AT&T Br. 24 n.109. Obviously, Mr. Nelson cannot rewrite the deemed lawful Tariff by simply responding to a garbled deposition question – which was followed by an objection – with the statement "That is what it says." The

that it provides AT&T Access Service under the Tariff, Great Lakes need only show that Great Lakes offers its telecommunications service to its conferencing customers for a fee, and that the customers are in fact "paying customers." They clearly are.

2. Great Lakes' Conferencing Customers Pay It a Fee for Telecommunications Service

The record in this case establishes that there can be no genuine dispute over whether Great Lakes' conferencing customers pay it a fee for telecommunications service. During discovery, to rebut AT&T's allegation that these customers pay Great Lakes *nothing*, Great Lakes produced copies of its conferencing customers' checks to Great Lakes and its bank statements that show receipt of wire payments of its telephone bills submitted to those customers, and AT&T now admits that Great Lakes has collected substantial monthly revenues from its high-volume customers.[120]

Great Lakes' expert, Michael Starkey, also catalogued the thousands of pages of contracts, invoices, and payment records that Great Lakes produced in discovery on that topic and prepared a summary report attached as Exhibit D to his opening expert report detailing, by customer and by month, what each customer was charged and what each customer in turn paid Great Lakes.[121] The evidence shows that, soon after the FCC issued its *Connect America Fund Order*, Great Lakes entered into new written agreements with its conferencing customers under which Great Lakes would charge its customers – and the customers would pay – a fee for Great Lakes' telecommunications service to them so that they could continue to provide their high-volume services, but also contribute *explicitly* to Great Lakes' costs in providing service to both IXCs and end users alike.

Tariff speaks for itself, and Mr. Nelson also testified that Great Lakes' high-volume customers are End Users. *See* AT&T Ex. 6, Nelson Dep. at 9-11.

120 AT&T Br. 25.

121 **Exhibit 10** (Starkey Report at 6-9 & Ex. D thereto).

Great Lakes' customers pay it a "fee" for telecommunications service. The FCC has long held that the "plain meaning of the phrase 'for a fee' under Section 153(46) means services rendered in exchange for something of value or a monetary payment."[122] "Note that in the context of the definition of 'telecommunications service,' the Commission has held that 'for a fee' broadly 'means services rendered in exchange for something of value or a monetary payment.'"[123] Thus, the customers' "monetary payment" to Great Lakes clearly satisfies the requirement that a fee be paid.[124]

It is also clear that the fee paid by Great Lakes' customers is a fee for telecommunications service. As noted above, the Commission does not regulate the relationship between a CLEC and its customers. It does not, for example, require CLECs to assess a tariffed interstate End User Common Line fee (also known as a Subscriber Line Charge) the way that the Incumbent LECs are required by regulation to assess. As AT&T's expert witness correctly

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122 *In re Fed.-State Joint Bd. on Universal Serv.*, Report and Order, 12 FCC Rcd. 8776, ¶ 784 (1997) (emphasis added). The definition of "telecommunications service" has since shifted down to 47 U.S.C. § 153(53).

123 *In re Universal Serv. Contribution Methodology a Nat. Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, 27 FCC Rcd. 5357, 5496, ¶ 86 n.214 (2012).

124 AT&T admits to paying the tariffed access charges of other LECs, including one or two in Iowa, that AT&T knows to be engaged in access stimulation without having inquired at all into the financial details of those LECs' relationship with their customers. **Exhibit 22** (Habiak Dep. 84:4-88:24). AT&T's procedure for determining whether it would pay those LECs' tariffed charges consisted of confirming that the rates were correctly set, the type of traffic (presumably to confirm that it was not international traffic not terminating at the LEC), and the volumes of traffic. *Id.* Unlike AT&T's deep dive into Great Lakes' customer relationships here, however, AT&T did not even ask to see any of those LECs' access-stimulation-related contracts before deciding to pay their access charges. *Id.* at 86:23-87:8. Traffic volume was the clear driver. When asked "Once a LEC acknowledges that it's engaged in access stimulation, why do the volumes matter?," AT&T's corporate designee testified "Um – fair point." *Id.* at 85:15-18. For AT&T, the LEC's volumes – and thus the size of the bill – is the determinative factor, not the facts or law.

testified, "the F.C.C. does not directly get involved in the relationships between a CLEC and its end users."[125]

Great Lakes' "Telecommunications Service Agreements" with its customers uniformly recite that their agreements are **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] [126] **[END HIGHLY CONFIDENTIAL]** On its face, then, Great Lakes and its customers contemplated and agreed that these Telecommunications Service Agreements under which the customers will pay Great Lakes a fee are an agreement for telecommunications service.[127]

Furthermore, the parties to these "Telecommunications Service Agreements" recognize and agree that Great Lakes is a **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** and that Great Lakes' conferencing customers provide **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** which they desire to obtain from Great Lakes.[128] Thus, from the start of each customer relationship, Great Lakes and its high-volume customers stipulate that they are entering into an agreement for Great Lakes' provision of telecommunications services consistent with federal law.

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125 **Exhibit 13** (Toof Dep. 199:5-25).

126 *See*, *e.g.*, AT&T Ex. 51 **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**; AT&T Ex. 47 **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**; AT&T Ex. 23 **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**; AT&T Ex. 46 **[BEGIN CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**.

127 *See also* Nelson Decl. ¶ 22.

128 *See*, *e.g.*, AT&T Ex. 51; AT&T Ex. 47; AT&T Ex. 23; AT&T Ex. 46.

The contracts likewise recite a non-exhaustive list of services that Great Lakes will provide to enable the customers to provide their telecommunications-dependent conferencing and chat services to the public, such as telephone numbers, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted][129] **[END HIGHLY CONFIDENTIAL]**

The fees each conferencing customer pays Great Lakes are recovered based upon their relative use of various Great Lakes facilities and services they rely upon in delivering their services to the public.[130] The fees are based upon, *inter alia*, the volume of **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** which is a direct proxy for the number of lines Great Lakes must serve for them, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** they consume on Great Lakes' network.[131]

These customers are indisputably being provided telecommunications services from Great Lakes for which they pay fees under a Telecommunications Service Agreement, pursuant to which Great Lakes then delivers to them the telephone calls (including those from AT&T subscribers) to telephone numbers assigned to them by Great Lakes. As a result, they are

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129 *See*, *e.g.*, AT&T Ex. 51; AT&T Ex. 47; AT&T Ex. 46.

130 *See* Nelson Decl. ¶ 22.

131 *See id.*; AT&T Ex. 51; AT&T Ex. 47; AT&T Ex. 23; AT&T Ex. 46; These customers are paying Great Lakes fees pursuant to a Telecommunications Service Agreement; in exchange, they receive telecommunications service and other ancillary services they need to provide their high-volume telecommunication-related services to the public. The idea that Great Lakes (a) revised its Tariff to clarify that its customers need to pay a fee for telecommunications service, (b) entered into new contracts – "Telecommunications Service Agreements" – with its conferencing customers to ensure they complied with the Commission's *Northern Valley* precedent and thus ensure the purpose of their revenue-sharing agreement, and then (c) charged and collected fees from them for only *non*-telecommunications services, as AT&T suggests, is plainly absurd. As this lengthy proceeding illustrates, it was not Great Lakes' intent to provide free access service to AT&T.

"[paying] Customers of an Interstate or Foreign Telecommunications Service," and thus end users under the Tariff. AT&T is, therefore, a Buyer under the Tariff that is "responsible for the payment of charges for any service it takes from" Great Lakes.[132]

B. AT&T Self-Servingly and Absurdly Misconstrues the TSAs

Great Lakes' fees for services to its high-volume customers – both telecommunications services and the ancillary services needed to provide those services to these customers – are fairly and equitably calculated based on the quantity of various categories of factors that typically go into serving high-volume customers such as conferencing providers.[133] The FCC has never held that a LEC must use any particular magic language to make a service a "telecommunications service" under the Act, and AT&T has pointed the Commission to nothing saying otherwise. Exhibit A to Great Lakes' Telecommunications Service Agreements with its end users provides that **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** which uniformly includes the recitation from paragraph 9 that these are **[BEGIN HIGHLY CONFIDENTIAL]** [redacted][134] **[END HIGHLY CONFIDENTIAL]** Thus, AT&T's exercise of nitpicking whether **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** are telecommunications services misses the point altogether.[135]

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132 AT&T Ex. 6, Tariff Original Page No. 7; *see also* **Exhibit 10,** Starkey Report at 6-9 (concluding that Great Lakes' high-volume customers are "end users" under the Tariff).

133 *See* Nelson Decl. ¶ 22.

134 *See, e.g.,* AT&T Ex. 51; AT&T Ex. 47; AT&T Ex. 46.

135 AT&T's reliance on *Metrocall* is misplaced. AT&T Br. 25. Most immediately, Great Lakes' DID-related services and charges are not just for "numbers," as AT&T pretends; as the

It was entirely reasonable for Great Lakes to calculate the fee for its telecommunications services based on certain key metrics that reflect the quantity of those services it provides to its various customers, and to ensure that similarly situated customers pay proportionate shares for their relative use of Great Lakes' local network. In light of the "enormous traffic volumes" that Great Lakes has terminated for AT&T's benefit,[136] without as much as a whisper of a complaint concerning calculating those volumes or any quality concerns whatsoever, Great Lakes necessarily had to provide its end users with the telecommunications services that they contracted and paid for under their TSAs with Great Lakes. AT&T trotted out this illogical theory in deposition and was rebuffed by Great Lakes' CEO.[137] By AT&T's absurd logic, buying a "stamp" gets you only paper and glue, not the transmission of your letter.[138] Only a party who wants millions of dollars of free service would take such a ridiculous position.

TSAs reflect, the DIDs necessarily include the trunking and other connectivity required for Great Lakes to terminate all of the calls that were indisputably completed in this case. In any event, the Commission there was called upon to address the prohibition against recurring charges solely for numbers assessed *from one carrier to another*, a situation that has no bearing here. As the FCC's *Metrocall* discussion makes clear, the FCC held in its 1986 *Local Competition Order* that **"LECs could not impose on CMRS carriers (including Metrocall) recurring charges for the use of DID numbers."** *Metrocall*, 17 FCC Rcd. at 2256, ¶ 8 (emphasis added). And the relevant rule that grew out of the *Local Competition Order* – 47 C.F.R. § 51.703(b) – confirms that these are rules that relate to charges by LECs to other "telecommunications carrier[s]." See 47 C.F.R. § 51.703(b) ("A LEC may not assess charges on any other telecommunications carrier for Non-Access Telecommunications Traffic that originates on the LEC's network."). And when the Commission confirmed that Concord could assess certain charges for DID services, the Commission held that it needed a complete record to be able to assess what certain charges were for, which completely undercuts AT&T's approach of looking only at the names of various fee categories on the TSA Exhibit As. *Metrocall* has no bearing here.

[136] Compl. ¶ 53.

[137] *See, e.g.,* AT&T Ex. 6 (Nelson Dep. 53-56) (testifying that **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**) (emphasis added); *see also See* Nelson Decl. ¶ 22.

[138] AT&T's construction of the TSAs is completely at odds with basic canons of contract interpretation. "Because a contract is to be interpreted as a whole, it is assumed in the first instance that no part of it is superfluous; an interpretation which gives a reasonable, lawful, and

At the end of the day, AT&T didn't care how Great Lakes memorialized its contracts and invoices with its conferencing customers. AT&T's self-help strategy is a reflexive, ingrained corporate policy – here designed not just to get free service from Great Lakes, but also to unravel the Commission's CEA arrangements around the country. ILECs around the country, including the carrier Great Lakes competes with, routinely use vague descriptors like "Internet and Home Phone," [139] "Local Services," [140] or "Voice" [141] to describe their telecommunications services on their customer invoices.[142] AT&T, for its part, uses the even more vacuous "Complete Choice® Basic."[143] Neither the Commission, nor any party of which Great Lakes is aware, has *ever* so much as hinted that these paying customers are not purchasing a "telecommunications service," and thus somehow do not qualify as end users for purposes of tariffed access charges. AT&T bills its end users for the "Complete Choice," albeit the "Basic" variety, which could just as easily be describing a breakfast cereal as it could a telecommunications service, and AT&T indisputably assesses its access charges on calls to or from those customers. Common sense, industry practice, and the plain language of Great Lakes' TSAs, all require the conclusion that Great Lakes' customers were offered – and paid a fee – for telecommunications service.

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effective meaning to all terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect." *Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents*, 471 N.W.2d 859, 863 (Iowa 1991); *see also Fashion Fabrics of Iowa, Inc. v. Retail Inv'rs Corp.*, 266 N.W.2d 22, 26 (Iowa 1978) (finding that language at the outset of a sublease that expressed the parties' intent could not be characterized as surplusage, because courts must "strive to give effect to all the language of a contract"); *Nationwide Agribusiness Ins. Co. v. PGI Int'l*, 882 N.W.2d 512, 515-16 (Iowa Ct. App. 2016) ("[W]e interpret a contract as a whole, so as to give effect to all provisions."). Although "words are to be given their ordinary meaning, particular words and phrases in a contract are not to be interpreted in isolation." *Iowa Fuel*, 471 N.W.2d at 863.

[139] http://www.centurylink.com/help/index.php?assetid=56 (CenturyLink sample invoice).

[140] http://www.centurylink.com/help/index.php?assetid=57 (CenturyLink sample invoice).

[141] http://www.centurylink.com/help/index.php?assetid=212 (CenturyLink sample invoice).

[142] http://static-verizon.com/cs/groups/public/documents/adacct/fios_bill_ex0826.pdf (Verizon uses the patriotic "Triple Freedom," which bundles in one line charges for "TV, Internet and Voice (phone) services").

[143] https://www.att.com/esupport/article.html#!/local-long-distance/KM1052638.

To conclude, we return to AT&T's opening attempt to mischaracterize the Commission's precedent and Great Lakes' Tariff to require the fee be paid for an explicitly denominated *interstate* service. It made that erroneous argument to support its equally flawed argument concerning how Great Lakes reports its high-volume customers' revenues on its Form 499-As. It is undisputed that Great Lakes reports to USAC and the FCC the revenue that it receives from its conferencing customers associated with the fee categories generally described on their invoices as **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** as end user telecommunications revenue in line 404.3 of its Form 499-As.[144] Great Lakes allocates those revenues to that line of the 499 because those customers' **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** service and related telecommunications services allow for inbound service but do not include outbound interstate calling, or "interstate toll," as part of those service plans, such that line 404.3 is the appropriate place to identify such fees on the Form 499. Great Lakes therefore properly reports its revenue data to the Commission and USAC consistent with Commission precedent.[145]

Great Lakes billed its conferencing customers substantial monthly fees – which were properly reported to the FCC as "end user" telecommunications service revenues on its Form 499s – for telecommunications services. AT&T's absurdist nitpicking of the contracts and invoices should be rejected.

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144 AT&T Ex. 56; Answer ¶ 48.

145 *See In re Universal Serv. Contribution Methodology,* 28 FCC Rcd. 16037, 16041-43, ¶¶ 10-13 (Nov. 25, 2013) (rejecting USAC's position that certain CLECs should have apportioned some of their end user revenue to the interstate revenue category on their 499s when the LECs did not denominate and book it as specifically "interstate" but rather charged a flat fee for the telecommunications services, and holding that "unless a CLEC chooses to recover the non-traffic-sensitive costs of providing interstate or interstate exchange access service from their end-user customers, and records such revenue as such in its supporting books and records, there is no obligation to report those revenues in the interstate jurisdiction as a SLC").

III. THE COMMISSION HAS AUTHORIZED – NOT PREEMPTED – STATE-LAW MODES OF RECOVERY FOR CLECs' ACCESS SERVICES

In the very first sentence of the *Seventh Report & Order*, the Commission emphasized that its new CLEC-access-charge rule was establishing a "'pro-competitive, **deregulatory** national policy framework' for the United States' telecommunications industry by addressing a number of interrelated issues concerning competitive local exchange carrier (CLEC) charges for interstate switched access services."[146] And when it clarified that rule three years later in the *Eighth Report & Order*, it iterated, again in the very first sentence, that it was implementing "a pro-competitive, **deregulatory** national policy" for CLECs' access charges.[147] Thus, the Commission's two CLEC-access-charge orders – both of which authorize CLECs to secure payment for access services pursuant to *state-law*-controlled contracts – proceeded from a ***deregulatory*** policy.

But according to AT&T, if AT&T were to be held liable for being *unjustly* enriched by a CLEC's access service that it received without paying for, or a state court implied a contract in law if some technical defect in contract formation occurred between AT&T and the CLEC, here are the parade of evils that AT&T foresees if AT&T failed to get free service from the CLEC:

> Permitting CLECs to proceed on state-law claims like GLCC's … would **produce unjust and unreasonable access rates**, **threaten the ubiquity of service**, and **allow states (or courts using state law) to undermine the federal regulatory regime however they deem fit**.[148]

As shown below, AT&T's shrill argument is as absurd as it sounds.[149]

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146 *Seventh Report & Order*, 16 FCC Rcd. at 9924, ¶ 1 (emphasis added).

147 *Eighth Report & Order,* 19 FCC Rcd. at 9109, ¶ 1 (emphasis added).

148 AT&T Br. 42 (emphasis added).

149 AT&T also overstates its case when it claims that the "District Court has already resolved this issue in AT&T's favor." AT&T Br. 33. While the late Judge O'Brien's interlocutory summary judgment opinion speaks for itself, his successor, Judge Bennett, recognized that his referral of these issue was akin to a collateral attack on the issue, as he wishes to ensure "just" compensation for telecommunications services, strongly suggesting that he does not believe

AT&T begins its exposition of the FCC's undisputed jurisdiction over interstate telecommunications with the Mann-Elkins Act of 1910.[150] The history lesson, though, is beside the point. To determine preemptive intent, the field-preemption inquiry focuses not only on Congress's intent, but also on whether the pervasiveness of the agency's regulations shows that it sought to "occupy the field" completely.[151] The crucial "first step" in this analysis, before proceeding with the field-preemption inquiry, is to "delineate the pertinent regulatory field" with specificity.[152] No one debates whether the Commission *could* exercise jurisdiction over interstate telecommunications *writ large*. But that is not the *pertinent* regulatory field. The operative question here is whether Congress, and the Commission acting within the scope of its

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"free" is "just," as AT&T maintains. *Great Lakes*, 2015 WL 3948764, at *8 ("I recognize that referral of these issues to the FCC amounts to something of a collateral attack on the rulings, in this case, dismissing GLCC's alternative state-law claims and that a determination of these issues by the FCC could invite reinstatement of GLCC's state-law claims in this case. Nevertheless, I conclude that referral to and determination by the FCC of these issues will likely serve the interests of justice and the purpose of the Communications Act to establish "just" compensation for telecommunications services.").

150 AT&T Br. 34.

151 *See, e.g.*, *R.J. Reynolds Tobacco Co. v. Durham Cty., N.C.*, 479 U.S. 130, 149 (1986) (explaining that when "Congress has entrusted an agency with the task of promulgating regulations to carry out the purposes of a statute," the court's preemption analysis "must consider whether the regulations evidence a desire to occupy a field completely"); *Nat'l Fed'n of the Blind v. United Airlines Inc.*, 813 F.3d 718, 734 (9th Cir. 2016) ("The essential field preemption inquiry is whether the density and detail of federal regulation merits the inference that any state regulation within the same field will necessarily interfere with the federal regulatory scheme."); *Montalvo v. Spirit Airlines*, 508 F.3d 464, 470 (9th Cir. 2007) ("While the comprehensiveness of a statute is one indication of preemptive intent, it alone is generally not sufficient to find that Congress intended to occupy the entire field. We may, however, also look to the pervasiveness of the regulations enacted pursuant to the relevant statute to find preemptive intent.") (internal citations omitted).

152 *Nat'l Fed'n of the Blind*, 813 F.3d at 734 (specifically defining the regulatory field at issue as airport kiosk accessibility in a case involving implied field preemption under the Air Carrier Access Act of 1986 and DOT's implementing regulations).

authority, have so pervasively regulated *CLECs' access services* to enable the finding that there is no room left for the enforcement of state law in this arena.[153]

The relevant history of the Commission's exercise of its *detariffing* authority shows that it *has not* preempted state law claims. To the contrary, the agency has consistently and explicitly opened the door to state law for those carriers whose services have been detariffed, including CLECs' access services. Beginning in the 1980s, the FCC began to end tariff-filing requirements through "mandatory detariffing" and "permissive detariffing," which the courts initially rejected.[154] In 1996, against this backdrop, Congress passed the Telecommunications Act of 1996. The Telecommunications Act "fundamentally altered the Communications Act's regulatory scheme" and "effectively adopted the FCC's detariffing rationale."[155] The 1996 Act enabled the FCC to forbear from the enforcement of any regulation, including the tariff-filing requirements in 47 U.S.C. § 203, if the FCC found them to be unnecessary to ensure just and reasonable rates or protect consumers, and if forbearance would be in the public interest.[156]

In 1997, the Commission exercised its new forbearance authority with regard to CLEC interstate access charges.[157] The FCC concluded that no carriers other than **incumbent** local exchange carriers ("ILECs") were required to tariff interstate access services; CLEC access

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153 A preemption analysis "must be guided by respect for the separate spheres of governmental authority preserved in our federalist system. Although the Supremacy Clause invalidates state laws that interfere with, or are contrary to the laws of Congress, the exercise of federal supremacy is not lightly to be presumed," and "[p]re-emption of state law by federal statute or regulation is not favored in the absence of persuasive reasons." *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 522 (1981) (internal quotations and citations omitted).

154 *See MCI Telecomms. Corp. v. FCC*, 765 F.2d 1186, 1193 (D.C. Cir. 1985); *MCI Telecomms. Corp. v. AT&T*, 512 U.S. 218, 231 (1994).

155 *Ting v. AT&T*, 319 F.3d 1126, 1132 (9th Cir. 2003).

156 47 U.S.C. § 160(a).

157 *See Hyperion Telecommunications, Inc. Petition Requesting Forbearance*, 12 FCC Rcd. 8596 (1997).

services were permissively detariffed.[158] Then, as noted above, the FCC continued its efforts to foster a "pro-competitive, deregulatory national policy framework" for CLEC access charges in its *Seventh Report & Order*. The *Seventh Report & Order* did not disturb the permissive-detariffing regime that the FCC established in 1997. Rather, the Commission made clear that a CLEC that opted to file a tariff could still collect rates from some IXCs at rates other than those contained in its tariff.[159] Thus, the FCC acknowledged that its heavily regulated, tariff-only approach for ILECs did not apply to CLECs. Therefore, CLECs enjoy far greater flexibility in recovering for their access services than AT&T's two-option regime suggests.[160]

Having enabled rights to be established via creatures of state law – contracts – the FCC has abdicated its ability to control the ancillary common law doctrines that the states have made available for centuries, including claims for *quantum meruit* and unjust enrichment. The FCC's detariffing orders "explicitly contemplate[d] a role for state law in the deregulated long-distance market," including in areas such as contract formation and breach of contract that are not governed by the Communications Act.[161] As the Ninth Circuit correctly observed, "[d]etariffing has created a much larger role for state law and this fact is sufficient to preclude a finding that

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158 *Id*.

159 *See, e.g., Seventh Report & Order,* 16 FCC Rcd. at 9940, ¶ 43 ("one or more IXCs may be willing to pay rates above the benchmark in order to receive that CLEC's switched access service").

160 AT&T's reference to Great Lakes' seven-year-old FCC petition dealt with an entirely different factual and legal landscape. It sought to preclude IUB action that would interfere with its federal tariff and numbering assignments, among other things. Moreover, at the time, the Commission had not yet reversed its original holding in *Qwest v. Farmers*, and the IUB's action threatened to injure Great Lakes' positions under that then-prevailing order. None of those circumstances are present here.

161 *In re Universal Serv. Fund Tel. Billing Practice Litig.*, 619 F.3d 1188, 1196 (10th Cir. 2010) (citing *In the Matter of Policy & Rules Concerning the Interstate, Interexchange Marketplace*, *Implementation of Section 25(g) of the Communications Act of 1934, As Amended*, Order on Reconsideration, 12 F.C.C. Rcd. 15014, 15057 ¶ 77 (1997) ("[C]onsumers may have remedies under state consumer protection and contract laws as to issues regarding the legal relationship between the carrier and customer in a detariffed regime.")).

Congress intended completely to occupy the field, following the 1996 Act.[162] When a tariff does not govern the telecommunications services at issue, the FCC's role is inherently limited because "there is no federal common law of contracts that the FCC can apply in resolving private contract disputes between long distance carriers and their customers."[163] Indeed, it would make little sense for the FCC to countenance state-law-governed negotiated contracts, but then (silently) amend all 50 states' statutes of fraud to include a new category of contract that must be in writing and signed by the party against whom it is sought to be enforced, and to preclude equitable modes of recovery designed to ensure just results when parties fail to reach a signed, written agreement.

Numerous decisions under the FCC's permissive-detariffing regime discredit AT&T's arguments that Great Lakes' state law claims are impliedly preempted. In *Northern Valley Communications, LLC v. Qwest Communications Corporation*, the federal district court noted that the "filed rate doctrine has been called into question" by the post-1996 Act "program of deregulation in favor of regulation by the market, supplemented by state-law remedies."[164] As a result, the court concluded that "where, as here, it is alleged that the charges as set out in [the CLEC's] tariff do not apply to the type of traffic at issue in this case, the filed rate doctrine would not defeat [the CLEC's] unjust enrichment claim."[165] Later in that case, in reviewing the evolution of FCC decisions regarding "access stimulation," Judge Kornmann rightly concluded

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162 *Ting*, 319 F.3d at 1137; *id.* at 1136 (emphasizing that "state law unquestionably plays a role in the regulation of long-distance contracts").

163 *Id.* at 1146.

164 *N. Valley Commc'ns, LLC v. Qwest Commc'ns Corp.*, 2009 DSD 11, 659 F. Supp. 2d 1062, 1069-70 (D.S.D. 2009) (citing *Verizon v. Covad*, 377 F.3d 1081, 1088 (9th Cir. 2004)).

165 *Id.* at 1070 (citing *Iowa Network Servs., Inc. v. Qwest Corp.*, 466 F.3d 1091, 1097 (8th Cir. 2006)).

that compensation would likely be due to Northern Valley even if its then-applicable tariff was found not to apply.[166] He reasoned as follows:

> The only consistent theme connecting *Farmers II* and the Rulemaking appears to be that **LECs should receive some form of compensation for access stimulation-related services**. *See Farmers II*, 24 FCC Rcd. at 14812 n. 96 ("This is not to say that Farmers is precluded from receiving any compensation at all for the services it has provided to Qwest."); *cf. Farmers & Merchants Mut. Tel. Co. v. FCC*, 668 F.3d 714, 723–24 (D.C.Cir.2011) (leaving open the possibility that Farmers may be compensated for services associated with access stimulation). Previous decisions such as *Farmers II* must be read as complementary to the Rulemaking. *Connect America Fund*, 27 FCC Rcd. 605, 613 (Feb. 3, 2012). Thus, it seems unlikely that the FCC foreclosed any compensation for services plaintiff provided outside of the tariff or a negotiated contract, as defendant argues.[167]

Further, courts that have foreclosed a LEC's ability to recover under state law have done so only *after* it was established that the carrier had a viable, alternative basis for compensation under the federal regulatory regime. For example, in the *INS v. Qwest* line of cases, Iowa Network Services ("INS"), a LEC, sought to recover its tariffed access charges from Qwest; Qwest denied liability under INS's tariff for the type of traffic at issue (namely, certain wireless calls).[168] In its initial 2003 decision, the Eighth Circuit reversed the district court's decision to dismiss INS's alternative claim for unjust enrichment *before* deciding whether INS's tariff applied to the traffic at issue, remanding the case so that the district court could "decide for itself whether the traffic at issue is subject to access charges pursuant to INS's tariffs."[169] When the case came back up on appeal in 2006, the Eighth Circuit affirmed the district court's dismissal of INS's state law claims only after it found that INS would be paid for its services pursuant to the applicable regulatory regime (in that case the reciprocal-compensation regime).[170]

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166 *N. Valley Commc'ns, L.L.C. v. Qwest Commc'ns Co.*, No. 1:09-CV-01004, 2012 WL 2366236 (D.S.D. June 20, 2012).

167 *Id.* at *7 (emphasis added).

168 *See Iowa Network Servs., Inc. v. Qwest Corp.*, 363 F.3d 683 (8th Cir. 2004).

169 *Id.* at 695.

170 *Iowa Network Servs., Inc. v. Qwest Corp.*, 466 F.3d 1091, 1098 (8th Cir. 2006).

Finally, the cases cited by AT&T are inapposite insofar as they (1) mechanically applied the filed-tariff doctrine, which historically precluded regulated carriers from pursuing alternative state law claims for recovery of tariffed services before Congress's authorization of the FCC's use of permissive detariffing; (2) concluded that dismissal of alternative state law claims was necessary because the Communications Act requires carriers to tariff all of their services; (3) applied pre-1996 holdings while failing to consider the implication of the permissive detariffing regime; or (4) related to dominant carriers rather than CLECs.[171]

Still others erroneously assume that, once a tariff is filed, the tariff establishes the *only* rate that a CLEC may assess, notwithstanding the FCC's contrary conclusion in *Hyperion* and the *Seventh Report & Order* that some IXCs could receive access services pursuant to tariff while other IXCs could receive such services through state-law contracts.[172] The strictures of the filed tariff doctrine only apply when a tariff is the *only* vehicle available for recovery. But the FCC has clearly established a different regime for CLECs, a regime that contemplates state-law-based modes of recovery.

Moreover, when, as here, AT&T claims that a CLEC did *not* provide access service, then the filed tariff doctrine can provide no bar. *N. Valley Commc'ns, L.L.C. v. AT&T Corp.*, No. 1:14-CV-01018-RAL, 2015 WL 11675666, at *4 (D.S.D. Aug. 20, 2015) ("if the service provided by Northern Valley falls outside its filed tariff …, then the filed-rate doctrine cannot bar Northern Valley's state equity claims"); *id*. at *6 ("If the filed tariff does not apply as alleged …, there appears not to be any FCC regulation that attempts to characterize this type of service,

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171 *See, e.g.,* AT&T Br. 48 n.201 (citing cases such as *Union Tel. Co. v. Qwest Corp.,* 495, F.3d 1187 (10th Cir. 2007) and *Paetec Commc'ns Inc. v. Commpartners, LLC,* 2010 WL 1767193 (D.D.C. Feb. 1, 2010)).

172 *See, e.g.,* AT&T Br. 48 n.199 (citing cases such as *MCI WorldCom v. PaeTec Commc'ns Inc.,* 2005 WL 2145499 (E.D. Va. Aug. 31, 2005), *aff'd*, 204 Fed. Appx. 271 (4th Cir. 2006); *Advamtel, LLC v. AT&T Corp.*, 118 F. Supp. 2d 680 (E.D. Va. 2000); and *Splitrock Props., Inc. v. Qwest Commc'ns Corp.*, 2009 WL 2827901 (D.S.D. Aug. 28, 2009)).

let alone regulate reasonable pricing for such a service. The state equity claims then would not interfere with the, as yet unexercised, FCC rate-setting authority."). Not only do such claims not run afoul of the filed tariff doctrine: those services fall outside the Commission's access-charge rules. *Id.* at *5 ("[I]f Northern Valley's services are not access services [as AT&T alleges], then they not only fall outside the tariff as AT&T claims, but also fall outside the scope of the FCC rule limiting the methods by which a CLEC may charge.").

AT&T also mischaracterizes the Commission's *All American Damages Order* to support its campaign for free service.[173] AT&T relies on a footnote from *All American* – a strange place to look for agency preemption of state law – but the FCC clearly issued no holding in that footnote. Rather, the Commission simply noted that the defendants there did not "demonstrate[ ] [ ] that they may plead equitable defenses in a Section 208 complaint proceeding, nor that they may seek equitable relief relating to matters subject to regulation."[174] The FCC did not rule that those defendants were barred from seeking equitable relief in state courts, which possess the jurisdiction to award such relief. Moreover, All American admitted that it did not provide AT&T with any service, making the question – which was never answered – entirely academic.[175] The Commission has been invited on numerous occasions to hold, as a matter of law, that these state-law claims are not viable, and each time it has declined to so rule. Having opened the door to state-law remedies, it cannot close it here.

AT&T's malevolent public policy predictions cannot motivate the Commission here. These alternative state law claims are designed to *prevent* injustice, and as AT&T notes, state courts have created a host of hurdles to recovering under these legal theories to ensure that

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173 *AT&T Corp. v. All Am. Tel. Co.,* 30 FCC Rcd. 8958 (2015) ("*All American Damages Order*").

174 *All American Damages Order,* 30 FCC Rcd. at 8963, ¶ 13 (2015) (emphasis added).

175 *Id*. ¶ 11 ("Defendants admit that they did not provide AT&T with access services and that Beehive did").

justice is served.[176] Why does justice bother AT&T so much? It is clearly afraid that its substantial revenues earned from taking Great Lakes' service for free for years could be at risk.[177] The high multiplier of AT&T's gross revenues vis-à-vis Great Lakes' tariffed rates that AT&T complains about are self-inflicted because AT&T obstinately refused to produce discovery on its costs of service, which Great Lakes' damages expert could then have accounted for in his calculation of AT&T's net profit.[178] Again, AT&T's self-inflicted harm cannot be Great Lakes' responsibility. AT&T's blocking threat is idle; just because the Commission has authorized state-law-based compensation to CLECs does not mean that it silently overruled its prohibition against blocking, which AT&T admits is unlawful.[179]

Again, in the absence of a signed, written agreement, these limited state-law, common law doctrines are designed to fill gaps, but only when doing so avoids injustice. The Commission has not shared (and respectfully cannot share) AT&T's hostility to justice. *New Valley Corp. v. Pacific Bell*, 8 FCC Rcd. 8126, 8127 ¶ 8 (1993) ("We find no basis in *Maislin* or any other court or Commission decision for the conclusion that a customer may be exempt from paying for services provided by a carrier if those services were not properly encompassed by the carrier's tariff."); *America's Choice Commc'ns, Inc. v. LCI Int'l Telecom Corp.*, 11 FCC Rcd. 22494, 22504, ¶ 24 (1996) ("[A] purchaser of telecommunications services is not absolved from paying for services rendered solely because the services furnished were not properly tariffed.").[180]

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176 AT&T Br. 42 n.171.

177 AT&T Br. 43.

178 *See* **Exhibit 30** (ECF No. 74, Dec. 11, 2014 District Court Order); **Exhibit 29** (Fischer Report, at 11-16 & n.11, & Exs. 1-5).

179 AT&T Br. 43.

180 *See also Worldcom, Inc. v. Graphnet, Inc.*, 343 F.3d 651, 655-56 (3d. Cir. 2003) (district court reversed where it erroneously assumed that a non-dominant carrier could not pursue compensation for its services pursuant to unjust enrichment or quantum meruit theories when the filed tariff doctrine was found to be inapplicable to its services); *Qwest Commc'ns v. Glob. NAPS*, No. 06-873, 2007 WL 7714219 (E.D. Va. Feb. 5, 2007) (finding that an implied-in-fact

In sum, the Commission's exercise of its detariffing authority for CLEC access charges reflects a pro-competitive, deregulatory approach that cannot be squared with the conclusions AT&T urges the FCC to reach here. If Great Lakes' tariff applies to the traffic at issue, its state law claims become unnecessary. But, unless and until that decision is reached, Great Lakes' alternative state law claims are viable, not preempted by federal law, and necessary to prevent AT&T from receiving a **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** windfall based on a technicality.

IV. AT&T'S ZERO-TO-$0.0007 RATE RANGE HAS NO BASIS IN FACT OR LAW

AT&T opines that, if it must compensate Great Lakes for its services, it should pay Great Lakes a "reasonable rate" of anywhere from *nothing* to $0.0007 per minute *at the maximum*.[181] AT&T's position is, once again, without merit.[182] As a threshold matter, in light of the analysis above that the Commission has authorized state-law modes of recovery for CLEC access services, Great Lakes maintains that state law should supply the procedural and substantive rules for recovery under such claims, such that juries, in the ordinary course, would decide the

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contract existed between CLEC and IXC because *Hyperion* created permissive detariffing environment, meaning that "the filed rate doctrine does not apply to these parties"); *Iowa Network Servs., Inc. v. Qwest Corp.*, 385 F. Supp. 2d 850, 907-09 (S.D. Iowa 2005) (observing that the "FCC has acknowledged the potential availability under state law of unjust enrichment and quantum meruit in the absence of an applicable tariff," but concluding that the claims would not proceed because the carrier "will be compensated for the traffic it transported over its lines and delivered to end-user customers" through a separate agreement); *cf. Ting,* 319 F.3d at 1143 (9th Cir. 2003) ("under the competition-based regime adopted by Congress in 1996, and implemented by the FCC, state law protections are no longer excluded as they once were under the express terms of the filed rate doctrine. . . . In deregulated markets, compliance with state law is the norm rather than the exception. Congress recognized as much in authorizing forbearance authorizing and emphasizing competition in the 1996 Act.").

[181] AT&T Br. 51.

[182] Great Lakes likewise views this discussion as outside the scope of the liability issues in light of the bifurcation of the liability and damages phases, but nevertheless offers this preliminary response to AT&T's presentation.

"reasonable value" for services provided in light of the unique facts and circumstances of each case.

As noted above, AT&T's critique of Great Lakes' damages expert's unjust enrichment calculation is that AT&T's gross revenues are too high compared to Great Lakes' tariffed charges. For one, AT&T's expert never squarely rebutted Mr. Fischer's calculations. But, secondly, as noted above, that figure is what it is in large part because of AT&T's discovery shenanigans, where, despite Great Lakes requesting this information in discovery, AT&T repeatedly refused to produce any of the data relating to its costs of service so that Great Lakes' expert could account for those costs in calculating the amount of AT&T's unjust enrichment. Thus, perversely, AT&T is critiquing Great Lakes' damages expert for not accounting for costs that AT&T refused to substantiate. Moreover, AT&T makes no effort to refute Great Lakes' damages expert calculation of the "market value" measure of damages applicable to Great Lakes' *quantum meruit* claim as the tariffed rate, consistent with the Commission's market-based CLEC-access-charge rule.[183] In view of the enormous revenues – retail and wholesale alike – that AT&T generated by taking Great Lakes' service for free for all these years, it would only be just for AT&T to have to pay the small share of those revenues that AT&T priced its services to its consumers as if it was paying.

The Commission has already rejected as *unreasonable* $0.0007 as a tariffed access rate.[184] In its final misrepresentation to the Commission, AT&T claims that Great Lakes "proposed" a rate of $0.0007 to IXCs for its intrastate rate in "negotiations," inviting the

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183 **Exhibit 29** (Fischer Expert Report at 10-11).

184 *See Connect America Fund Order*, ¶ 692 ("We will not adopt a benchmarking rate of $0.0007 in instances when the definition [of access stimulation] is met, as is suggested by a few parties. The $0.0007 rate originated as a negotiated rate in reciprocal compensation arrangements for ISP-bound traffic, and there is insufficient evidence to justify abandoning competitive LEC benchmarking entirely.") (Identifying AT&T as one of the parties that had proposed the $0.0007 rate rejected by the FCC).

Commission to believe that Great Lakes would have accepted that rate for the approximately 99% of its traffic that is interstate.[185] As AT&T notes, however, the IUB's HVAS regime requires access-stimulating LECs to negotiate with and secure the agreement of *every* IXC to be able to charge a tariffed intrastate access rate.[186] Since no one in the universe has those diplomacy skills, and at the time Great Lakes was in litigation with three large IXCs, it proposed the rate of $0.0007 to "avoid the legal battle."[187] But the IXCs did not consent to that rate, and in light of the *de minimis* amount of Great Lakes' intrastate traffic, Great Lakes has not pursued the now-mooted IUB process to establish an intrastate access rate. *Nothing* can reasonably be inferred about Great Lakes' refusal to pursue a lengthy, futile regulatory proceeding just to recover a few dollars of revenue.[188]

Great Lakes' experts have opined on and calculated, to the extent of the record evidence available to them, the range of reasonable rates that AT&T should pay Great Lakes for its services under its state law claims.[189]

CONCLUSION

AT&T's Complaint should be denied on all Counts. Count I must be denied because, even if AT&T actually requested a direct-connect from Great Lakes and could have implemented it, which AT&T has not proven, it is not entitled to one as a matter of law. Insofar as its Count I is in fact a collateral attack on the FCC's CEA regime, Great Lakes cannot be held liable for AT&T's compliance with the Commission's rules. In all events, no relief is available to AT&T on Count I in this adjudicatory proceeding. Count II must be denied because, contrary to

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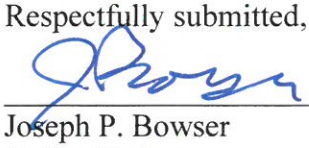
185 AT&T Br. 53.
186 AT&T Br. 53-54.
187 **Exhibit 12** (Nelson Dep. 37:24-39:24).
188 *See also* **Exhibit 14** (Starkey Rebuttal Report, at 30-31).
189 *See* **Exhibit 10** (Starkey Report 13-18); **Exhibit 29** (Fischer Report 10-16 & Exs. 3-4); **Exhibit 16** (Fischer Rebuttal Report 4-13 & Ex. 4).

AT&T's acuity in tortured reading, a natural, comprehensive view of Great Lakes' relationship with its paying conferencing customers confirms that they are "end users" under Great Lakes' tariff. Great Lakes' interpretation gives meaning to the full body of the contracts and fulfills the purpose of the contracting parties'; AT&T's interpretation of the contracts – to which it is not a party – is self-servingly results-driven, illogical, and ignores the majority of the contracts, contrary to centuries-old canons of interpretation. And, finally, AT&T's request for the Commission to foreclose collateral state-law doctrines designed to avoid injustice, when the Commission has already authorized CLECs to recover for their access services via state-law contracts, must be rejected as an improper invitation to preempt that which the Commission can no longer preempt.

DATED: September 15, 2016

Respectfully submitted,



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COUNSEL FOR GREAT LAKES
COMMUNICATION CORP.

Before the FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(202) 457-3090

Complainant,

v. **File No. EB-16-MD-001**

GREAT LAKES COMMUNICATION CORP.
1501 35th Avenue, W
Spencer, IA 51301
(712) 580-4700

Defendant.

DECLARATION OF JOSH NELSON

I, Josh Nelson, of full age, hereby declare and certify as follows:

1. I am the Chief Executive Officer of Great Lakes Communication Corporation ("Great Lakes"). I offer this declaration in support of Great Lakes' Answer to AT&T's Formal Complaint, and to address certain statements made by AT&T in order to clarify the record. This Declaration contains information based on my personal knowledge and review of the documents and records kept by Great Lakes in the normal course of its business.

2. When I formed Great Lakes, we hired a telecommunications consulting company to prepare our regulatory compliance filings, such as our registration papers with the Iowa Utilities Board and our switched access tariff with the Board and the Federal Communications Commission.

3. In the roughly six years that Great Lakes' first FCC access tariff was in effect, AT&T never once requested the direct trunked transport service offered in that tariff. In fact, no IXC ever requested that service from Great Lakes while Tariff No. 1 was in effect.

4. In its complaint AT&T discusses past decisions of the Iowa Utilities Board in order to put Great Lakes in a bad light and to indirectly support its decision to withhold payment from Great Lakes for the tariffed access services that we have provided to AT&T over the last several years. Unsurprisingly, AT&T does not tell the whole story.

5. As CEO, I acknowledge and take responsibility for much of the history that Great Lakes had in its relationship with the Iowa Utilities Board. The Iowa Utilities Board was the first state utility commission to enter an order finding that some carriers, including Great Lakes, were not fully complying with the requirements for providing local exchange service, and so were not entitled to collect access charges on calls to conference call providers. This was a significant departure from the existing guidance that existed at the time and raised several questions about the future of Great Lakes. Indeed, the IUB tried to direct the North American Numbering Plan Administrator to revoke the telephone numbers that Great Lakes held for assignment to our customers, even though those numbers were already in use by millions of consumers across the country who were using the conference calling and chat line services that our customers were providing to them.

6. Great Lakes challenged the IUB in federal court and won. The federal district court entered a Temporary Restraining Order and, after a full evidentiary hearing, an injunction against the IUB, concluding that it had exceeded the bounds of authority and was improperly threatening Great Lakes' viability as a company. Of course, protecting Great Lakes' rights through the court process did not win us any friends at the IUB.

7. In 2011 the IUB initiated a procedure to examine whether there were other bases upon which to revoke Great Lakes' authority to operate in Iowa. After extensive written filings and an evidentiary hearing, the IUB decided that the record did not support the revocation of Great Lakes' CPCN to provide service in Iowa – the outcome that AT&T had asked the IUB for. Instead, it directed Great Lakes to expand its service offerings and required compliance with a strict schedule. The IUB was, I acknowledge, critical of decisions I had made as CEO of Great Lakes in its order.

8. Around the same time period, the FCC adopted the Connect America Fund Order that provided that CLECs engaged in access stimulation had to revise their tariffed access rates to mirror the lowest price cap ILEC in the state. For Iowa, that is CenturyLink.

9. After reviewing the IUB's decision, and with an awareness of the FCC's new access stimulation rules, I reflected on which way I wanted Great Lakes to go and made a series of business decisions. Chief among those decisions was that, even with our access rates decreasing significantly, Great Lakes could still be profitable if it continued to serve conference call and chat line providers. Despite the negative language that has been used about these services, I still believe that the services have helped millions of entrepreneurs, religious institutions, political candidates, and government agencies save hundreds of millions of dollars in conference fees that they otherwise would have paid to AT&T and other traditional, more expensive, conference call services. I believe that, like every other sector, the telecommunications sector benefits from competition and innovation and that refusing to serve these types of high volume customers would have been a disservice to my customers and those that have come to value their services. That being said, I understand and appreciate why the FCC decided that the rates previously charged by those engaged in access stimulation did not

appropriately balance the competing factors at play in the telecommunications market. Ultimately, while I may have preferred a different outcome, I believe that the FCC's policy decision, as reflected in the Connect American Fund Order, was sound and I appreciated the certainty it brought to an issue that had been hotly debated between LECs and IXCs for many years. Indeed, I was happy to see that, with rare and isolated exceptions, such as AT&T's withholding here, very few industry disputes over access stimulation remain. For Great Lakes, AT&T is the only carrier that is not paying Great Lakes for termination of its traffic.

10. At the same time, I understood that Great Lakes must fulfill its role to the community we serve. So we undertook a serious effort to expand our service offerings to local residences and businesses, as directed by the IUB. The company has invested millions of dollars to construct a state-of-the-art network that provides telephone and/or Internet services to residences and business in several Iowa communities, including Milford, Lake Park, Spirit Lake, Spencer and areas of Okoboji, Arnolds Park, Superior, Langdon, Greenville, Gillett Grove, Webb, Linn Grove, Sioux Rapids, as well as some southern portions of Jackson and Nobles counties in Minnesota. We've won – and kept happy – many customers from the incumbent in our territory, and we've also delivered high-speed internet to many customers in our rural territory who never had it available before, all without a penny of subsidy or aid from the FCC's various programs.

11. As part of our expansion, we have also significantly expanded our staff to ensure quality customer service. For example, Great Lakes hired a new president, Kellie Beneke, in 2012. Mrs. Beneke oversees the day-to-day operations of Great Lakes and its customer-focused local service brand, IGL TeleConnect. Mrs. Beneke also supervises the staff of roughly 15 full-time people that work for Great Lakes, plus the additional staff we engage for special projects

and construction. Over the course of the past few years, we have built a truly extraordinary team of dedicated individuals who work across the company on issues such as network deployment, customer service, and billing.

12. Great Lakes and IGL TeleConnect have built a solid reputation for a commitment to quality customer service and community engagement. While I acknowledge that the company has had rough times in its earlier years, we have always endeavored to learn and grow from our mistakes.

13. I am proud of the company's accomplishments and the important role it plays in the community today. The level and type of engagement we have in the community is too significant to describe in full, but I will point out a few highlights. In August 2014, Great Lakes was honored to have Governor Brandstad on hand as it opened a new state-of-the-art data facility that helps provide services to rural Iowa.[1] In December of that year, Great Lakes was recognized by the Iowa Lakes Corridor Development Corporation with its Small Business Excellence award.[2] In 2015, I was recognized among a group of 15 people that were leading positive change in my community.[3] Most recently, Great Lakes was recognized for expanding its coverage into the area of Everly, Iowa, bringing better Internet service to this community.[4] In short, the history that AT&T introduces to the Commission tells only part of the story, and noticeably omits the more relevant, and current parts of the company's history.

14. At some point in the first several months of 2012, someone from AT&T called me to ask whether AT&T could establish a direct connect to Great Lakes' network. As I recall, it was a short phone call. He said he was with AT&T and asked about a direct connection, but he

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1 *See*: http://www.spencerdailyreporter.com/story/2111666.html.
2 *See:* http://www.dickinsoncountynews.com/story/2143117.html.
3 *See:* http://www.spencerdailyreporter.com/story/2163408.html.
4 *See*: http://www.spencerdailyreporter.com/story/2338045.html.

not able to address either the technical or the financial issues that his question raised. He could not tell me how AT&T proposed to technically provision a direct connection. For example, he was not able to state whether AT&T wanted to exchange traffic in TDM or in IP format; if the connection would be in Spencer, Iowa, Des Moines, Iowa, or some other location; whether AT&T had or planned to construct its own lines of sufficient capacity, or whether AT&T's "direct" connection would actually be through another third-party carrier, such that it was simply an alternative to the indirect interconnection that AT&T has always maintained through Iowa Network Service's centralized equal access service. He also did not tell me what rate AT&T was offering for the direct connection. Without any of those key details, and since Great Lakes does not have to establish a direct connection, I told him I was not interested in continuing the discussion.

15. A month or two later, AT&T stopped paying our tariffed charges. Based on the dispute notice, it is my belief that its author, Mr. Giedinghagen, is the same individual that had called me to request some form of "direct connect." The letter gives four reasons for why AT&T said they were not going to pay our tariffed charges. His notice does not mention anything about a direct connect or Great Lakes' tariffed rates being incorrect.

16. Through Great Lakes' counsel, we have made **[BEGIN CONFIDENITAL]** [redacted] **[END CONFIDENTIAL]**

17. On June 26, 2016, **[BEGIN CONFIDENITAL]** [redacted], **[END CONFIDENTIAL]** and I authorized our counsel to accept that offer for Great Lakes. Upon learning that the United States District Court for the

Northern District of Iowa was going to refer issues to the federal court, rather than allowing the case to proceed for its scheduled jury trial the following week, AT&T changed its mind and said the offer was no longer something that Great Lakes could accept. Believing that the parties had a deal, we tried to get the Court to enforce the deal, but the Court decided AT&T had reserved the right to withdraw the deal until a final version of the contract was signed and also concluded that the offer was not definitive enough. I have made **[BEGIN CONFIDENITAL]** [redacted] **[END CONFIDENTIAL]**

18. I have reached numerous mutually acceptable business arrangements with other carriers under which Great Lakes terminates long distance traffic pursuant to contract. Those other customers, unlike AT&T, do not engage in self-help withholding as a negotiating tactic, and have been prepared to discuss the technical and financial terms of the commercial agreement they would like to have with our company.

19. For example, **[BEGIN HIGHLY CONFIDENITAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** for the direct interconnection we established between our networks.

20. I am confident that AT&T has numerous options to get its traffic to Great Lakes that do not require it to use INS's CEA service. As I mention above, we already have contracts with various IXCs under which they connect directly and efficiently to Great Lakes' network via IP interconnections and they route various Tier 1 carriers' traffic to Great Lakes on a wholesale basis; in fact, Great Lakes terminates a minority of its traffic pursuant to its tariffed service.

21. I understand that AT&T is complaining that Great Lakes did not agree to a "direct connect," but that they apparently really want an indirect connection via CenturyLink, which would then provide AT&T with direct-trunked transport to Spencer. Given my experience in the industry, and with the networks in Northwest Iowa specifically, I would be surprised to learn that CenturyLink has had enough idle capacity to get all of AT&T's Great Lakes-bound traffic to Spencer. In any case, during our negotiations with AT&T we have asked them how they propose connecting, and they have never provided me with any concrete details.

22. I understand that AT&T claims that we only bill our high-volume customers for non-telecommunications services. Their lawyer tried to explain this to me in my deposition and I simply did not understand it. We bill our high-volume customers for all of the services we provide them, and the services we provide each customer are all substantially the same. There may be differences in terms of the format in which our customers want us to deliver them their traffic (some in IP, others in TDM). But for all of AT&T's calls coming into us from INS, we take their calls from our connection with INS in Spencer, haul it back to our switch in Spencer, and then deliver that call (in TDM or IP based on the customer's preference) over trunks to their particular equipment location. For our high-volume customers, the three major variables that it takes to provide their service are **[BEGIN CONFIDENITAL]** [redacted] **[END CONFIDENTIAL]** So in our effort to have each high-volume customer contribute their appropriate share to Great Lakes' costs of providing them service on our local network, including terminating them all of their interstate calls, when we price out the total monthly cost for each high-volume customer we look at those three variables and do our best to charge comparable prices for comparable quantities of service. That said, it is absolutely silly to

say that those are the *only* three services we are billing for. Those monthly fees are designed to cover the multitude of costs we incur to provide them service, from the technical staff monitoring and operating the network; the lines, switches, electronics and other gear needed to run a network; the building they run their services from; the staff who handle customer support and billing; the trucks we use to get from one location to another, insurance, regulatory compliance, and so on and so on. Given the proliferation of branded local service names that consumers see on their bills that mention nothing about telecommunications – "Xfinity," "FIOS," "U-Verse" – I find it absolutely bizarre for anyone to suggest that we are not providing, billing, and collecting for our telecommunications service under our Telecommunications Service Agreements with our high-volume customers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 14, 2016.

Josh Nelson

Before the FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of AT&T CORP. One AT&T Way Bedminster, NJ 07921 (202) 457-3090 Complainant, v. GREAT LAKES COMMUNICATION CORP. 1501 35th Avenue, W Spencer, IA 51301 (712) 580-4700 Defendants,	File No. EB-16-MD-001

DECLARATION OF MICHAEL STARKEY

I, Michael Starkey, declare as follows:

1. I am the President and founding partner of QSI Consulting, Inc. ("QSI"). I have worked as a professional in the telecommunications industry since 1991 (roughly 25 years). I have worked as a consultant for numerous communications companies (AT&T, Charter, Comcast, Level 3, Sprint, T-Mobile, etc.) and other industry stakeholders (*e.g.* U.S. Department of Defense, state regulatory agencies, etc.) since 1996. Prior to that, I served as the Director of Telecommunications for the Maryland Public Service Commission ("PSC") and as an economist for other state agencies authorized to regulate intrastate telecommunications markets: *i.e.*, the Illinois Commerce Commission ("ICC") and the Missouri PSC ("MoPSC").

2. I have committed a large portion of my career to studying the technical, financial and public-policy aspects of interconnection between telecommunications carriers. For example, early in my carrier, as a Senior Policy Analyst at the ICC, I was tasked with drafting one of the nation's first administrative rules dictating the technical and financial architecture for the interconnection of competing local exchange carriers ("LECs"). The rule was ultimately adopted by the ICC and implemented in the Illinois marketplace prior to the Telecommunications Act of 1996 ("TA96"). Commission rules adopted as a result of the TA96 follow the same basic technical and financial architecture as the previous Illinois rule. While a Senior Economist at the MoPSC, I was assigned to an inter-departmental task force to evaluate the Commission's inter-office transport restructuring efforts for switched access services via CC Docket No. 91-213 (*circa* 1992).[1] It was that docket wherein the Commission for the first time required incumbent LECs ("ILECs") to provide the type of Direct Trunk Transport ("DTT") service about which AT&T complains in this proceeding. I have analyzed and structured numerous inter-carrier compensation proposals and I have provided my opinions as an expert on these matters in more than one hundred contested proceedings before state regulators, various state and federal courts, the U.S. Patent and Trademark Office and the Commission.

3. My background, education, and professional experience are set forth in more detail in my curriculum vitae attached as Exhibit A to this declaration.

4. I have personal knowledge of the facts and conclusions set forth below, and if called as a witness, I could and would competently testify to the following.

[1] *In the Matter of Transport Rate Structure and Pricing Petition for Waiver of the Transport Rules filed by GTE Service Corporation*, CC Docket No. 91-213, FCC 92-442, 7 FCC Rcd 7006, Adopted September 17, 1992 (*Access Transport Restructure Ruling).*

AT&T Doesn't Complain About Great Lakes' Switched Access Rates

5. My initial reaction to AT&T's Complaint[2] is that AT&T appears to be suing Great Lakes because it believes the tandem switched rates it pays Iowa Network Services ("INS") are too high. For example, Mr. Habiak, who provides an analysis of the savings AT&T could enjoy if Great Lakes were to acquiesce to a DTT arrangement at CenturyLink rates,[3] focuses solely on the INS tandem switching charges AT&T would avoid. Interestingly, AT&T's analysis doesn't contemplate any reduction in Great Lakes' switched access rates or any existing Great Lakes' switched access rates AT&T would avoid via a DTT.

6. AT&T's complaint also doesn't describe the specifics of a DTT arrangement it seeks with Great Lakes. AT&T does not describe the number of trunks it would commit to, the specific route it would prefer to use, or even who it would purchase transport facilities from to create the hypothetical DTT circuit serving as the cornerstone for its estimated savings. As such, the analysis is so conceptually abstracted as to be relatively meaningless.

[2] *Formal Complaint of AT&T Corp.* (hereafter "Complaint"), August 16, 2016.

[3] *See* Exhibit 91.

Mr. Habiak's Analysis Ignores Important Differences between Dedicated Transport and Common Transport

7. In addition to being conceptually flawed, AT&T's Complaint fails to properly describe or appreciate important differences between the dedicated, DTT service it seeks and the shared, tandem-switched transport it currently receives from Great Lakes. By ignoring these important differences, Mr. Habiak's analysis portrays an unachievable "best of both worlds," scenario for AT&T. In Mr. Habiak's construct, AT&T gains the advantages typically obtained by committing to a fixed-capacity purchase over time (*i.e.*, a dedicated facility), without the concurrent need to engineer and/or pay for the actual facilities that would be required. The fact is that DTT is an entirely different service, with different engineering, operational and pricing characteristics that do not lend themselves to the simplistic (and ultimately misleading) per-minute comparison AT&T makes at paragraph 59 of its Complaint.

8. As the Commission knows, common transport between a tandem and a sub-tending end office is shared by all interexchange carriers ("IXCs") that terminate (or originate) traffic to that end office. The very nature of common transport places both the operational and financial responsibility for properly engineering those shared facilities on the LEC (in this case Great Lakes). To the extent Great Lakes procures too much transport capacity relative to the traffic it ultimately receives, its costs per minute of use ("MOU") go up (perhaps dramatically). At the same time, to the extent it doesn't procure enough transport resources for the traffic from/to the IXCs it serves, traffic blockage occurs (potentially in conflict with Commission requirements) and consumer phone calls cannot be completed. All of these underlying contingencies must be managed by Great Lakes without any commitment from the IXCs as to the timeframe over which they will require

transport facilities or the traffic volumes they may demand (*i.e.*, common transport is purchased by IXCs as needed on a per MOU basis without term or volume commitments). These uncertainties create real financial risk and costs that are borne by Great Lakes.

9. The same risks borne by Great Lakes in a common transport scenario shift entirely to the IXC when the IXC purchases DTT. Now, it is the IXC (in this case AT&T) that must ensure it has properly procured and sized the transport facilities between itself and Great Lakes and it is AT&T that bears the associated financial and operational risks. Yet, Mr. Habiak's overly simplistic calculation at Exhibit 91 assumes away these important differences between shared and dedicated transport and as a result, his rates fail to capture reasonably calculated DTT costs.

10. DTT services are not purchased (or sold) on a per MOU basis in the way that Mr. Habiak structures his analysis. Instead, AT&T would be required to purchase a certain amount of capacity (*e.g.*, a DS3 or multiple DS3s) based upon the amount of traffic it forecasts between itself and Great Lakes. Also, in order to achieve the best transport prices, it would likely need to commit to purchasing some level of capacity over some notable term (*e.g.*, 3 to 5 years). Mr. Habiak's analysis ignores these complexities. For example, Mr. Habiak arrives at his per MOU DTT costs by modeling a single, highly utilized DS3 circuit. I have recreated his per DS3 pricing analysis below:

[[BEGIN HIGHLY CONFIDENTIAL]]

[[END HIGHLY CONFIDENTIAL]]

11. In essence, Mr. Habiak assumes a hypothetical DS3 will accommodate either 11 million or 7 million minutes per month (he provides both scenarios so as to create a range for the Commission's consideration). He then calculates, using CenteryLink's current tariff switched access tariff, the cost AT&T would pay to CenturyLink for a single DS3 presumably reaching 78 miles from CenutryLink's tandem office in Sioux City, IA (where AT&T apparently has a point of presence – "POP") to Great Lakes' host switch in Spencer, IA.[4] He simply divides the monthly DS3 cost by the 11 million and/or 7 million minutes he has assumed to arrive at a per MOU cost.

12. There are numerous problems with Mr. Habiak's approach. First, his analysis includes an implicit, and unreasonable, assumption that AT&T can first establish, and then add (and furlough) DS3 capacity instantaneously as needed without increased

[4] Mr. Habiak does not describe how he arrived at transport mileage equaling 78 miles. However, given that 78 miles equates roughly to the distance between Sioux City, IA (where CenturyLink maintains a tandem office and serving wire center) and Spencer, IA (the location of Great Lakes' host switch), I assume he is modeling a CenturyLink special access circuit extending from its Sioux City office to Great Lakes' office in Spencer.

cost. Reference Exhibit 91. Therein, AT&T identifies the number of MOUs it delivered to Great Lakes, by month, from March 2012 through June 2016. **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **END HIGHLY CONFIDENTIAL]]** The chart below highlights the variability of AT&T's traffic during the period at issue:

[[BEGIN HIGHLY CONFIDENTIAL]]

[redacted]

[[END HIGHLY CONFIDENTIAL]]

13. Using Mr. Habiak's assumption above (*i.e.,* 7 million MOU per DS3), AT&T would have required only **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted]

[redacted].[5] **[[END HIGHLY CONFIDENTIAL]]** If we, like Mr. Habiak, make a simplifying (but far more reasonable) assumption, *i.e.*, that AT&T must build its network to accommodate peak demand, we can assume that AT&T would have required **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** throughout the entire period at issue.[6] This simple assumption increases Mr. Habiak's calculated DTT costs by as much as 6 times in some months.[7]

14. There are additional problems with Mr. Habiak's analysis. First, he makes the herculean assumption that CenturyLink has **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** worth of capacity sitting idle between Sioux City and Spencer that it could sell to AT&T for this purpose. Yet, I could find nowhere in AT&T's complaint (including Mr. Habiak's declaration and his deposition transcript from the federal court case), evidence that CenturyLink has this capacity available, and let alone in the amounts implicitly assumed by Mr. Habiak in his analysis. To the extent CenturyLink does not have that type of capacity readily available, it is likely that AT&T would be subject to special construction charges associated with CenturyLink building additional capacity to meet AT&T's needs. Special construction charges can be

[5] *See, e.g.,* Exhibit 15 to Mr. Habiak's November 13, 2014 deposition (US District Court, Western Division, Case No. 5:13-cv-4117) – hereafter "Habiak Dep. Tr." Therein, Lyn Walker from AT&T's Trunk Planning and Engineering group estimated in December 2011 that AT&T would require **[[BEGIN CONFIDENTIAL]]** [redacted] **CONFIDENTIAL]]**

[6] This assumption, while simple, is more reasonable than Mr. Habiak's notion that AT&T can add and decrease capacity instantaneously and without increases in per-unit costs. Engineers use peak-demand to size transport circuits, *see Cost Versus Quality of Service, Chapter 14, Engineering and Operations in the Bell System*, Bell Laboratories, Seventh Printing 1982. I used the lower end of Mr. Habiak's assumed utilization (7 million MOU per DS3 per month) for simplicity. Using an assumption of 11 million minutes would result in similar (though somewhat less dramatic) increases compared to Mr. Habiak's original results.

[7] My detailed calculations are available in Exhibit B.

material, especially for facilities of this magnitude.

15. CenturyLink includes in its federal access tariff (Tariff F.C.C. No. 12) details regarding projects where it has had to construct facilities to accommodate large service orders from various customers. The details of these service orders and the resultant charges differ dramatically depending upon the type, length, and location of the necessary facilities. Hence, as you would expect for "special" construction charges, calculating an average or representative charge is impossible. Indeed, it is the very fact that each route is "special" and must be evaluated upon the particulars of the situation that makes Mr. Habiak's overly-simplified hypothetical so meaningless. Nonetheless, using an AT&T, Iowa-specific example from CenturyLink's FCC Tariff 12 involving much less capacity than the **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** AT&T would need in this circumstance (Case No. 39, 1st Revised Page 9-13), I've calculated the potential charges AT&T might face were CenturyLink required to build some number of facilities to accommodate Mr. Habiak's hypothetical DTT. Case No. 39 from the CenturyLink special access tariff describes a situation wherein AT&T apparently requested 1 OC3 (the equivalent of only 3 DS3s) to be placed between two locations in Dubuque, IA (roughly 4.9 miles apart).[8] AT&T was, per Case No. 39, required to pay CenturyLink a total of $375,537.22 in special construction charges. When I extend that same level of special construction charges to a similar circuit between Sioux City and Spencer to match Mr. Habiak's hypothetical DTT, I calculate special construction charges of nearly $6 million (see Exhibit C for more detail), whereas, Mr. Habiak's

[8] Optical Carrier ("OC") denotes the capacity of a given circuit within the Synchronous Optical Network ("SONET") standard. *See* Telcordia GR-253, *Synchronous Optical Network (SONET) Transport Systems: Common Generic Criteria.*

analysis assumes $0.

16. Mr. Habiak also ignores important components of CentryLink's DTT service that are clearly applicable. As detailed above, Mr. Habiak estimates AT&T would pay to Centurylink $2,770.24 per DS3. However, he arrives at this figure by zeroing out the single largest per-unit fee that CenturyLink would charge per its tariff, *i.e.*, Entrance Facility charges.

DS3	Monthly Rates	Application	**Scenario 1**	**Scenario 2**
	Zones 1, 2, 3			
Entrance Facility	$1,083.53	0	$0.00	$0.00
Termination	$264.88	1	$264.88	$264.88
Per Mile	$32.12	78	$2,505.36	$2,505.36
Total			**$2,770.24**	**$2,770.24**
Minutes per Mo. Per DS3			11,000,000	7,000,000
Cost to AT&T/MOU			**$0.000252**	**$0.000396**

Neither Mr. Habiak nor AT&T explain why his analysis ignores entrance facility charges.[9] I can only assume this assumption stems from the fact that AT&T believes it has sufficient capacity on existing entrance facilities at CenturyLink's Sioux City tandem location.[10] Nonetheless, whether spare or purchased anew, those entrance facilities come at a cost to AT&T. Per CenturyLink's tariff (as indicated in Mr. Habiak's analysis), they cost $1,083.53 per DS3 per month. If we revise Mr. Habiak's analysis just to add these necessary elements, his calculated cost per minute increases nearly 40%.

17. If I revise Mr. Habiak's analysis to accommodate all of the shortcomings discussed above (peak demand deficiencies, special construction charges, and the need for

[9] *See, e.g.,* CenturyLink Tariff F.C.C. No. 11, Page 6-9.

[10] *See* Habiak Dep. Tr. 187.

entrance facilities), Mr. Habiak's estimated DTT costs, over the period in question **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted], **[[BEGIN HIGHLY CONFIDENTIAL]]** roughly 5.5 times higher than Mr. Habiak's original calculation.

18. I understand that even at these much higher, more reasonably calculated DTT costs, AT&T might still see savings over the amounts it pays to INS for tandem switched services. Nonetheless, as I described above, that has little to do with Great Lakes' switched access rates or the reasonableness thereof.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 15th day of September, 2016, in St. Charles, Missouri.

Michael Starkey

Before the FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of

AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(202) 457-3090

Complainant,

v.

GREAT LAKES COMMUNICATION CORP.
1713 McNaughton Way
Spencer, IA 51301
(712) 580-4700

Defendants,

File No. EB-16-MD-001

DECLARATION OF MICHAEL STARKEY

EXHIBIT A

Michael Starkey

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Founding Partner
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Biography

Mr. Starkey currently serves as the President and Founding Partner of QSI Consulting, Inc. QSI is a consulting firm concentrating primarily on regulated markets including the telecommunications industry. QSI assists its clients in the areas of regulatory policy, business strategy, financial and econometric analysis and inter-carrier issues including compensation. Prior to founding QSI Mr. Starkey served as the Senior Vice President of Telecommunications Services at Competitive Strategies Group, Ltd. in Chicago, Illinois.

Mr. Starkey's consulting career began in 1996 shortly before the passage of the Telecommunications Act of 1996. Since that time, Mr. Starkey has advised some of the world's largest telecommunications stakeholders (e.g., AT&T, MCI, Time Warner, T-Mobile, Comcast, the United States General Services Administraation, etc.) on a broad spectrum of issues including the most effective manner by which to interconnect competing networks. Mr. Starkey's experience spans the landscape of competitive telephony including interconnection agreement negotiations, mediation, arbitration, and strategies aimed at maximizing new technology. Mr. Starkey's experience is often called upon as an expert witness. Mr. Starkey has since 1991 provided testimony in greater than 150 proceedings before approximately 40 state and foreign utility regulatory authorities, the FCC and courts of varying jurisdiction.

Mr. Starkey's expertise with competitive communications issues is rooted not only in his consulting experience, but also in his previous employment. Mr. Starkey has worked for the Missouri, Illinois and Maryland public utility commissions, including his most recent position as Director of the Maryland Commission's Telecommunications Division (and as the Senior Policy Analyst for the Illinois Commission's Office of Policy and Planning and Senior Economist with the Missouri Public Service Commission).

Educational Background

Bachelor of Science, Economics, International Marketing
Missouri State University (f/k/a Southwest Missouri State University)
Cum Laude Honor Graduate

Graduate Coursework, Finance
Lincoln University

Numerous telecommunications industry training courses

QSI consulting, inc.

Michael Starkey

Professional Experience

Competitive Strategies Group
1996 – 1999
Senior Vice President
Managing Director of Telecommunications Services

Maryland Public Service Commission
1994-1995
Director
Telecommunications Division

Illinois Commerce Commission
1993 – 1994
Senior Policy Analyst
Office of Policy and Planning

Missouri Public Service Commission
1991-1993
Senior Economist
Utility Operations Division – Telecommunications

Professional Activities

Former Co-Administrator of the Missouri Universal Service Fund on behalf of the Missouri Universal Service Board.

Facilitator, *C^3 Coalition* (Competitive Carrier Coalition - Ameritech Region). Facilitate industry organization representing 10-15 competitive carriers seeking to share information and "best practices" with respect to obtaining effective interconnection, UNEs and resold services from SBC/Ameritech.

Former member of the Missouri Public Service Commission's Task Force on FCC Docket Nos. 91-141 and 91-213 regarding expanded interconnection, collocation, and access transport restructure

Former member of the AT&T / Missouri Commission Staff, *Total Quality Management Forum* responsible for improving and streamlining the regulatory process for competitive carriers

Former member of the Missouri, Oklahoma, Kansas, Texas, and Arkansas five state Southwestern Bell Open Network Architecture (ONA) Oversight Conference

Former delegate to the Illinois, Michigan, Indiana, Ohio, and Wisconsin Ameritech Regional Regulatory Conference (ARRC) charged with the responsibility of analyzing Ameritech's "Customers First" local exchange competitive framework for formulation of recommendations to the FCC and the U.S. Department of Justice

Former Co-Chairman of the Maryland Local Number Portability Industry Consortium responsible for developing and implementing a permanent database number portability solution

Former member of the Illinois Local Number Portability Industry Consortium responsible for developing and implementing a permanent database number portability solution

Expert Testimony – Profile

The information below is Mr. Starkey's best effort to identify all proceedings wherein he has provided pre-filed written testimony, an expert report, live testimony or participated in some other meaningful way (e.g., deposition).

US District Court, Northern District of Illinois, Eastern Division
Case No. 16-cv-06976
Inteliquent, Inc. v. Free Conference Corporation et. al.
On behalf of Free Conference Corporation

US District Court, Southern District of New York
Civil Action No. 15-CV-870(VM)(DF)
Peerless Network, Inc. et. al. v. AT&T Corporation
On behalf of Peerless Network, Inc.

Chancery Court of Davidson County, Tennessee, 20th Judicial District (Part 1, Nashville)
Case No. 12-1749-I
Comcast Holdings Corporation, et. al, v. Richard Roberts, Commissioner of Revenue, State of Tennessee
On behalf of Comcast, *et. al.*

Circuit Court, Fifth Judicial District, State of South Dakota (County of Brown)
Case No. 06CIV15-000134
James Valley Cooperative Telephone et al v. South Dakota Network, LLC
On behalf of James Valley Cooperative Telephone *et al.*

US District Court, Northern District of Illinois, Eastern Division
Case No. 14-cv-7417
Peerless Network, Inc. v. MCI Communications Services (Verizon et al)
On behalf of Peerless Network, Inc.

US District Court, Northern District of Texas, Dallas Division
Consolidated Action 3:15-CV-0404-K
AT&T (various affiliates) vs. Dollar Phone Access, Inc.
On behalf of DollarPhone Access, Inc.

US District Court, Southern District of Iowa, Central Division
Case No. 4:07-cv-00078-JEG-RAW
In Re Tier 1 JEG Telecommunications Cases, Qwest Communications Corporation vs. Various Parties
On behalf of Free Conferencing Corporation

US District Court, District of South Dakota, Northern Division
Case No. 6:14-cv-1018
Northern Valley Communications, LLC vs. AT&T Corp.
On behalf of Northern Valley Communications, LLC

Administrative Hearings Commission, State of Missouri
Case No. 14-0055 RI
Vodafone Holdings, Inc. Protest of Denial of Refund Claim
On behalf of the Missouri Department of Revenue

US District Court, Middle District of Florida, Orlando Division
Civil Action 14-cv-00307
Blitz Telecom v. Peerless Network, Inc.
On behalf of Peerless Network, Inc.

United States Bankruptcy Court, Western District of Texas, Austin Division
Case No. 13-10570-TMD
UPH Holdings, Inc. et al v. Sprint Nextel Corporation
On behalf of the Liquidating Trustee, UPH Holdings, Inc. *et al*

Superior Court of the State of California for the County of Los Angeles
Case No. BC 513029
Garland Connect, LLC v. Pacific Bell Telephone Company, d/b/a AT&T California
On behalf of Garland Connect, LLC

US District Court for the Northern District of Iowa, Western Division
Case No. 5:13-cv-4117
Great Lakes Communication Corp. v. AT&T Corp.
On behalf of Great Lakes Communication Corp.

US District Court for the District of Minnesota
Case No. 0:10-cv-00490 MJD-SER
Qwest Communications Company, LLC v. Free Conferencing Corp., Audiocom, LLC; Global Conference Partners; Ripple Communications, Inc.; Basement Ventures, LLC; and Vast Communications, LLC
On behalf of Defendants

US District Court for the Northern District of California
Case No. 4:13 cv 02131 DMR
Layer2 Communications, Inc. v. Flexera Software, LLC
On behalf of Layer 2 Communications, Inc.

U.S. District Court for the Southern District of Iowa, Central Division
Case Nos. 4:07-cv-0043, 0078-0058 cons., 00194, 4:08-cv-00005, 5:07-cv-04095-104017 cons.
Qwest Communications Company v. Superior Telephone Cooperative, Et al.
On behalf of Great Lakes Communication Corp. and Superior Telephone Cooperative

Before the Public Service Commission, State of Georgia
Docket 15418
Capital Communication Consultants, Inc. v. BellSouth Telecommunications, LLC d/b/a AT&T Georgia
On behalf of Capital Communication Consultants, Inc.

District Court of the Fourth Judicial District of the State of Idaho, County of Ada
Case No. CV OC 1103406
Cable One, Inc. v. Idaho State Tax Commission
On behalf of the Idaho State Tax Commission

Before the Minnesota Public Utilities Commission
Docket No. MPUC P-5096, 5542/C-09-265
In the Matter of the Complaint by Qwest Communications Company, LLC against Tekstar Communications, Inc. regarding Traffic Pumping
On behalf of Tekstar Communications, Inc.

Before the Florida Public Service Commission
Docket No. 110056-TP
In re: Complaint against Verizon Florida, LLC and MCI Communications Services, Inc., d/b/a Verizon Business Services for failure to pay intrastate access charges for the origination and termination of intrastate interexchange telecommunications service, by Bright House Networks Information Services (Florida), LLC.

On behalf of Bright House Information Services (Florida) LLC

Before the Pennsylvania Public Utility Commission
Docket Nos. C-2010-2216205, et. al.
Armstrong Telecommunications, Inc. v Verizon Pennsylvania Inc., et. al.
On behalf of Armstrong Telecommunications, Inc.

Before the Ontario Energy Board
EB-2011-0120
In the Matter of an application by Canadian Distributed Antenna Systems Coalition for certain orders under the Ontario Energy Board Act, 1998
On behalf of Toronto Hydro-Electric System Limited

Federal Communications Commission
File No. EB-11-MD-006
In the Matter of Sprint Communications Company, L.P., v. Tekstar Communications, Inc.
On behalf of Tekstar Communications, Inc.

Before the Michigan Public Service Commission
Case No. U-16467
In the matter of the petition and application of TDS Metrocom, LLC and McLeodUSA Telecommunications Services, L.L.C., d/b/a Paetec Business Services against AT&T Michigan to establish or alter a network element rate
On behalf of McLeodUSA and TDS Metrocom

US District Court, Northern District of Texas, Fort Worth Division
Case No. 4:09-cv-755-A
Transcom Enhanced Services, Inc. v. Qwest Corporation
On behalf of Transcom Enhanced Services, Inc.

United States Patent and Trademark Office
***Inter Partes* Reexamination of U.S. Patent No. 7,123,708**
On behalf of Peerless Network, LLC

Before the Illinois Commerce Commission
Docket No. 09-0315
Investigation into whether Intrastate Access Charges of McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services are Just and Reasonable
On behalf of PAETEC Business Services

Before the Public Service Commission of Wisconsin
Docket No. 6270-TI-221
TDS Metrocom LLC and McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services Petition to Determine Rates and Costs for Unbundled Network Elements or Unbundled Service Elements of Wisconsin Bell, Inc. d/b/a AT&T Wisconsin
On behalf of TDS Metrocom LLC and McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services

United States District Court for the Northern District of Illinois
Case No. 1: 08-cv-03402
Neutral Tandem, Inc. v. Peerless Network, LLC
On behalf of Peerless Network, LLC

Commonwealth of Massachusetts Appellate Tax Board

Docket No. 293831
AT&T Corp. vs. Commissioner of Revenue
On behalf of the Massachusetts Department of Revenue

Oregon Tax Court, Regular Division, Corporation Excise Tax
Case No. 4814
AT&T Corp. and Includible Subsidiaries v. Department of Revenue, State of Oregon
On behalf of the Oregon Department of Revenue

Before the Public Utilities Commission of the State of Colorado
Docket No. 07A-211T
In the Matter of Qwest Corporation's Application, Pursuant to Decision Nos. C06-1280 and C07-0423, Requesting that the Commission Consider Testimony and Evidence to Set Costing and Pricing of Certain Network Elements Qwest is Required to Provide Pursuant to 47 U.S.C. 55 251(b) and (c).
On behalf of CBeyond Communications, Covad Communications Company, Integra Telecom, Inc., PAETEC Business Services and XO Communications Services, Inc.

In the Circuit Court of St. Louis County, Missouri
Cause No. 01 CC-004454
St. Louis County, Missouri vs. AT&T Wireless Services, Inc., et al
On behalf of T-Mobile USA, Inc.

Before the Federal Communications Commission
Enforcement Bureau Docket EB-09-MD-008
Saturn Telecommunications Services, Inc. vs. AT&T
On behalf of Saturn Telecommunications Services, Inc.

Before the New Jersey Board of Public Utilities
Docket No. TX08090830
In the Matter of the Board's Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates
On behalf of PAETEC Communications, Inc., and US LEC of Pennsylvania, LLC

In the Circuit Court for the 7th Judicial Circuit of Illinois
Docket No. 2004TX00001-6
AT&T Corporation and Affiliates vs. The Illinois Department of Revenue
On behalf of the Illinois Department of Revenue

Before the Federal Communications Commission
CC Docket No. 01-92
In the Matter of Developing a Unified Intercarrier Compensation Regime
On behalf of Nuvox Communications, Inc., XO Communications, PAETEC Communications

Public Service Commission of the District of Columbia
Formal Case No. 1040
In the Matter of the Investigation into Verizon Washington, D.C. Inc.'s Universal Emergency Number 911 Services Rates in the District of Columbia.
Advisor to the Public Service Commission of the District of Columbia

Before the Public Service Commission of Maryland
Case No. 9123
In the Matter of the Commission's Inquiry Into Verizon Maryland Inc.'s Provision of Local Exchange Telephone Service Over Fiber Optic Facilities
On behalf of the Maryland Office of People's Counsel

Before the Minnesota Public Utilities Commission
Docket No. P-421/AM-06-713
In the Matter of Qwest Corporation's Application for Commission Review of TELRIC Rates Pursuant to 47 U.S.C. §251
On behalf of Integra Telecom of Minnesota, Inc.; McLeodUSA Telecommunications Services, Inc.; POPP.com, Inc.; DIECA Communications, Inc. d/b/a Covad Communications Company; TDS Metrocom; and XO Communications of Minnesota, Inc.

Before the Maine Public Utilities Commission
Docket No. 2007-67
Verizon New England Inc., Northern New England Telephone Operations Inc., Enhanced Communications of Northern New England Inc., Northland Telephone Company of Maine, Inc., Sidney Telephone Company, Standish Telephone Company, China Telephone Company, Maine Telephone Company, and Community Service Telephone Co., Re: Joint Application for Approvals Related to Verizon's Transfer of Property and Customer Relations to Company to be Merged with and into FairPoint Communications, Inc.
Advisor to the Maine Public Utilities Commission

In the United States District Court for the Northern District of Illinois, Eastern Division
Case No. 06 C 3431
Illinois Bell Telephone Company, Inc., Plaintiff, v. Global NAPs Illinios Inc., et al., Defendants
On behalf of Global NAPs Illinois, Inc. et al.

Before the Minnesota Public Utilities Commission
MPUC Docket #P-421/CI-05-1996
In the Matter of a Potential Proceeding to Investigate the Wholesale Rate Charged by Qwest
On behalf of Eschelon Telecom, Inc., Integra Telecom of Minnesota, Inc. McLeodUSA Telecommunications Services, Inc., POPP.com, Inc., Covad Communications Company, TDS Metrocom and XO Communications of Minnesota , Inc.

Before the Public Utilities Commission of the State of Hawaii
Docket No. 2006-0450
In the Matter of Pacific Lightnet, Inc., Complainant, vs. Hawaiian Telcom, Inc., Respondent
On behalf of Pacific Lightnet, Inc.

Before the Public Utility Commission of Texas
SOAH Docket No. 473-07-1365
PUC Docket No. 33545
Application of McleodUSA Telecommunications Services, Inc. for Approval of Intrastate Switched Access Rates Pursuant to PURA Section 52.155 and PUC Subst. R. 26.223
On behalf of McLeodUSA Telecommunications Services, Inc.

Before the Public Utility Commission of Oregon
Docket No. ARB 775
In the Matter of the Petition of Eschelon Telecom of Oregon, Inc. For Arbitration with Qwest Corporation, Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996
On behalf of Eschelon Telecom, Inc.

Before the Public Utilities Commission of Colorado
Docket No. 06B-497T
In the Matter of the Petition of Qwest Corporation for Arbitration with Eschelon Telecom, Inc. Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996
On behalf of Eschelon Telecom, Inc.

Before the Washington Utilities and Transportation Commission
Docket No. UT-063061
In the Matter of the Petition of Qwest Corporation for Arbitration with Eschelon Telecom, Inc. Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996
On behalf of Eschelon Telecom, Inc.

Before the Arizona Corporation Commission
Docket No. T-03406A-06-0572
Docket No. T-01051B-06-0572
In the Matter of the Petition of Eschelon Telecom of Arizona, Inc. For Arbitration with Qwest Corporation, Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996
On behalf of Eschelon Telecom, Inc.

Before the Office of Administrative Hearings, For the Minnesota Public Utilities Commission
PUC Docket No. P-5340, 421/IC-06-768
OAH Docket No. 3-2500-17369-2
In the Matter of the Petition of Eschelon Telecom, Inc. For Arbitration with Qwest Corporation, Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996
On behalf of Eschelon Telecom, Inc.

Before the Public Utilities Commission of Colorado
Docket No. 06F-124T
In the Matter of: McLeodUSA Telecommunications Services, Inc., Complainant, v. Qwest Corporation, Respondent
On behalf of McLeodUSA Telecommunications Services, Inc.

American Arbitration Association
Case No. 74 494 J 00703 06 BEAH
Saturn Telecommunications Services, Inc. v. Covad Communications Company
On behalf of Covad Communications Company

Before the Arizona Corporation Commission
Docket No. T-03267A-06-0105
Docket No. T-01051B-06-0105
In the Matter of: McLeodUSA Telecommunications Services, Inc., Complainant, v. Qwest Corporation, Respondent
On behalf of McLeodUSA Telecommunications Services, Inc.

Before the Washington Utilities and Transportation Commission
Docket No. UT-063013
McLeodUSA Telecommunications Services, Inc., Petitioner, v. Qwest Corporation, Respondent
On behalf of McLeodUSA Telecommunications Services, Inc.

Before the Public Service Commission of Utah
Docket No. 06-2249-01
In the Matter of the Complaint of McLeodUSA Telecommunications Services, Inc., against Qwest Corporation for Enforcement of Commission-Approved Interconnection Agreement
On behalf of McLeodUSA Telecommunications Services, Inc.

Before the Iowa Utilities Board
Docket No. FCU-06-20
McLeodUSA Telecommunications, Inc., v. Qwest Communications
On behalf of McLeodUSA Telecommunications Services, Inc.

American Arbitration Association
Case No. 77 181 0289 MAVI
T-Mobile USA, Inc., Claimant, vs. Qwest Corporation (f/k/a US West Communications, Inc.), Respondent
On behalf of T-Mobile USA, Inc.

In the United States District Court for the Eastern District of North Carolina, Western Division
Case No. 5:04-CV-96-BO(1)
Global NAPs North Carolina, Inc., Global NAPs Georgia, Inc., and Global NAPs South, Inc., Plaintiffs, v. BellSouthTelecommunications, Inc., Defendant
On behalf of Global NAPs (collectively)

Before the Illinois Commerce Commission
Docket No. 05-0575
Illinois Bell Telephone Company Compliance with Requirements of 13.505.1 of the Public Utilities Act (Payphone Rates)
On behalf of The Illinois Public Telecommunications Association

Before the Public Utilities Commission of the State of California
Application 05-07-024
Application of Pacific Bell Telephone Company, d/b/a SBC California for Generic Proceeding to Implement Changes in Federal Unbundling Rules Under Sections 251 and 252 of the Telecommunications Act of 1996
On behalf of MCIMetro Access Transmission Services, LLC, Covad Communications Company and Arrival Communications, Inc.

Before the Public Service Commission of Wisconsin
Docket No. 6720-TI-108
Investigation of the Access Line Rates of Wisconsin Bell, Inc., d/b/a SBC Wisconsin, that Apply to Private Payphone Providers
On behalf of The Wisconsin Pay Telephone Association

Before the Public Utilities Commission of the State of California
Docket No. A.05-05-027
Application by Pacific Bell Telephone Company d/b/a SBC California (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services LLC (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996.
On behalf of MCIMetro Access Transmission Services, LLC

Before the Michigan Public Service Commission
Case No. U-14447
In the matter, on the Commission's own motion to commence a collaborative proceeding to monitor and facilitate implementation of Accessible Letters issued by SBC Michigan and Verizon
On behalf of Covad Communications Company.

Before the Public Utilities Commission of Ohio
Case No. 05-887-TP-UNC
In the matter of the Establishment of Terms and Conditions of an Interconnection Agreement Amendment Pursuant To The Federal Communications Commission's Triennial Review Order and Its Order on Remand.
On behalf of MCIMetro Access Transmission Services, LLC

Before the Public Service Commission of Wisconsin
Docket No. 05-MA-138

Petition of MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. for Arbitration of Interconnection Terms and Conditions and Related Arrangements with Wisconsin Bell, Inc., d/b/a SBC Wisconsin Pursuant to Section 252(b) of the Telecommunications Act of 1996
On behalf of MCIMetro Access Transmission Services, LLC and MCI Worldcom Communications, Inc.

Indiana Utility Regulatory Commission
Cause No. 42893-INT 01
Indiana Bell Telephone Company, Incorporated d/b/a SBC Indiana Petition for Arbitration of Interconnection Rates Terms and Conditions and Related Arrangements with MCImetro Access Transmission Services LLC, Intermedia Communications LLC, and MCI Worldcom Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996
On behalf of MCIMetro Access Transmission Services, LLC, Intermedia Communications, LLC and MCI Worldcom Communications, Inc.

Before the Illinois Commerce Commission
Docket No. 05-0442
Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 with Illinois Bell Telephone Company to Amend Existing Interconnection Agreements to Incorporate the Triennial Review Order and the Triennial Review Remand Order
On behalf of Access One, Inc.; Broadview Networks, Inc.; BullsEye Telecom, Inc.; Cbeyond Communications, LLC; USXchange of Illinois, LLC, d/b/a ChoiceOne Communications; CIMCO Communications, Inc.; First Communications, LLC; Forte Communications, Inc.; Globalcom, Inc.; ICG Telecom Group, Inc.; King City Telephone, LLC, d/b/a Southern Illinois Communications; KMC Telecom V, Inc.; McLeodUSA Telecommunications Services, Inc.; Mpower Communications Corporation, d/b/a Mpower Communications of Illinois; Neutral Tandem – Illinois, LLC; New Edge Network, Inc.; nii Communications, Ltd.; Novacon Holdings,LLC; Nuvox Communications of Illinois, Inc.; OnFiber Carrier Services, Inc.; Talk America, Inc.; TCG Chicago; TCG Illinois; TDS Metrocom, LLC; and Trinsic Communications, Inc.

Before The Hawaii Public Utilities Commission
Docket No. 04-0140
Application of Paradise MergerSub, Inc., GTE Corporation, Verizon Hawaii Inc., Bell Atlantic Communications, Inc., and Verizon Select Services Inc. For Approval of a Merger Transaction and Related Matters
On behalf of the Hawaii Public Utilities Commission

Before the Illinois Commerce Commission
Docket No. 04-0469
Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Ilinois Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996
On behalf of MCImetro Access Transmission Services, LLC, MCI Worldcom Communications, Inc. and Intermedia Communications LLC

Before the Public Utility Commission of Texas
Docket No. 28821
Arbitration of Non-Costing Issues for Successor Interconnection Agreements to The Texas 271 Agreement.
On behalf of MCImetro Access Transmission Services, LLC

Before the Public Service Commission of Wisconsin
Docket No. 6720-TI-187
Petition of SBC Wisconsin to Determine Rates and Costs for Unbundled Network Elements
On behalf of AT&T Communications of Wisconsin, LP, TCG Milwaukee and MCI, Inc.

Before the Illinois Commerce Commission

Docket No. 02-0864
Filing to increase Unbundled Loop and Nonrecurring Rates (Tariffs filed December 24, 2002)
On behalf of *The CLEC Coalition* (AT&T, Worldcom, Inc., McLeodUSA, Covad, TDS Metrocom, Allegiance, RCN Telecom, Globalcom, Z-Tel, XO Illinois, Forte Communications, CIMCO Communications)

Before the Connecticut Department of Public Utility Control
Docket No. 03-09-01PH02
DPUC Implementation of the Federal Communications Commission's Triennial Review Order – Hot Cut/Batch
On behalf of MCI

Before the Public Utilities Commission of the State of California
Rulemaking 95-04-043, Investigation 95-04-044
Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.
On behalf of MCImetro, MCI Worldcom

Before the Public Utility Commission of Texas
Docket No. 28607
Impairment Analysis of Local Circuit Switching for the Mass Market
On behalf of MCImetro, MCI Worldcom, Brooks Fiber Communications of Texas

Before the State Corporation Commission of the State of Kansas
Docket No. 03-GIMT-1063-GIT
In the Matter of a General Investigation to Implement the State Mandates of the Federal Communications Commission's Triennial Review Order
On behalf of MCImetro, MCI Worldcom

Before the Public Utilities Commission of Ohio
Case No. 04-34-TP-COI
In the Matter of the Implementation of the Federal Communications Commission's Triennial Review Regarding Local Circuit Switching in SBC Ohio's Mass Market
On behalf of MCImetro, MCI Worldcom

Before the Michigan Public Service Commission
Case No. U-13891
In the matter, on the Commission's own motion, to investigate and to implement, a batch cut migration process
On behalf of MCImetro, MCI Worldcom

Before the Michigan Public Service Commission
Case No. U-13796
In the matter, on the Commission's own motion, to facilitate the implementation of the Federal Communication Commission's Triennial Review determinations in Michigan
On behalf of MCImetro, MCI Worldcom

Before the Missouri Public Service Commission
Case No. TO-2004-0207
In the Matter of a Commission Inquiry into the Possibility of Impairment Without Unbundled Local Circuit Switching when Serving the Mass Market
On behalf of Sage Telecom, Inc.

Before the State of New York Public Service Commission

Case No. 02-C-1425
Proceeding on Motion of the Commission to Examine the Process, and Related Costs of Performing Loop Migrations on a More Streamlined (e.g., Bulk) Basis
On behalf of MCImetro, MCI Worlcom

Before the Indiana Utility Regulatory Commission
Cause No. 42393
In the Matter of the Commission Investigation and Generic Proceeding of Rates and Unbundled Network Elements and Collocation for Indiana Bell Telephone Company, Incorporated d/b/a SBC Indiana Pursuant to the Telecommunications Act of 1996 and Related Indiana Statutes
On behalf of *The CLEC Coalition* (AT&T, TCG Indianapolis, Worldcom, Inc., McLeodUSA, Covad, Z-Tel).

Before the Michigan Public Service Commission
Case No. U-13531
In the matter, on the Commission's own motion, to review the costs of telecommunications services provided by SBC Michigan
On behalf of AT&T, Worldcom, Inc., McLeodUSA and TDS Metrocom.

Before the Illinois Commerce Commission
Docket No. 03-0323
Petition to Determine Adjustments to UNE Loop Rates Pursuant to Section 13-408 of the Illinois Public Utilities Act
On behalf of *The CLEC Coalition* (AT&T, Worldcom, Inc., McLeodUSA, Covad, TDS Metrocom, Allegiance, RCN Telecom, Globalcom, Z-Tel, XO Illinois, Forte Communications, CIMCO Communications)

Before the Public Utility Commission of Ohio
Case No. 96-1310-TP-COI
In the Matter of the Commission's Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services
On behalf of the Payphone Association of Ohio

Before the Wisconsin Public Service Commission
Docket No. 6720-TI-177
Investigation Into Ameritech Wisconsin's Loop Conditioning Services and Practices
On behalf of WorldCom, Inc., AT&T Communications of Wisconsin, L.P. and TCG Milwaukee, McLeodUSA Telecommunications Services, Inc., TDS Metrocom, LLC

Before the Michigan Public Service Commission
Case No. U-11756 - REMAND
Complaint Pursuant to Sections 203 and 318 of the Michigan Telecommunications Act to Compel Respondents to Comply with Section 276 of the Federal Telecommunications Act
On behalf of the Michigan Pay Telephone Association

Before the New York Public Service Commission
Case No. 00-C-0127
Proceeding on the Motion of the Commission to Examine Issues Concerning Provision of Digital Subscriber Line Services
On behalf of MCI Worldcom Network Services, Inc.

Before the Indiana Utility Regulatory Commission
Cause No. 42236

Complaint of Time Warner Telecom Against Ameritech Indiana Regarding Its Unlawful Market Practice of Issuing Equipment Vouchers in Violation of the Indiana Code and Opportunity Indiana II and Petition for Emergency Suspension of any and all Ameritech Indiana Equipment Voucher Marketing Practices Pending Commission Investigation
On behalf of Time Warner Telecom of Indiana, LP

Before the Pennsylvania Public Utility Commission
Docket No. P-00930715F0002
Re: Verizon Pennsylvania Inc., Petition and Plan for Alternative Form of Regulation Under Chapter 30, 2000 Biennial Update to Network Modernization Plan
On behalf of MCI Worldcom Network Services, Inc.

Before the Illinois Commerce Commission
Docket No. 01-0609
Investigation of the propriety of the rates, terms, and conditions related to the provision of the Basic COPTS Port and the COPTS-Coin Line Port
On behalf of Payphone Services, Inc., DataNet Systems, LLC, Illinois Public Telecommunications Association

Before the Indiana Utility Regulatory Commission
Cause No. 40611-S1 (Phase II)
In the Matter of: The Commission Investigation and Generic Proceeding on Ameritech Indiana's Rates for Interconnection Service, Unbundled Elements, and Transport and Termination under the Telecommunications Act of 1996 and Related Indiana Statutes
On behalf of AT&T, Worldcom, Inc., and McLeodUSA Telecommunications Services, Inc.

Before the State of North Carolina Utility Commission
Docket No. P-7, Sub 980, P-10, Sub 622
Enforcement of Interconnection Agreement Between KMC Telecom III, Inc. and KMC Telecom V, Inc., against Carolina Telephone and Telegraph Company and Central Telephone Company
On behalf of KMC Telecom, Inc.

Before the Illinois Commerce Commission
Docket Nos. 98-0252, 98-0335, 98-0764 (Reopening)
SBC/Ameritech Merger, Reopening to Discuss Settlement Agreement Regarding Merger Savings
On behalf of AT&T, Worldcom, Inc., and McLeodUSA Telecommunications Services, Inc.

Before the Public Utility Commission of Ohio
Docket No. 01-1319-TP-ARB
In the Matter of MCImetro Access Transmission Services, LLC Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Ohio
On behalf of MCIWorldcom, Inc.

Before the Illinois Commerce Commission
Docket No. 00-0393 (Rehearing)
Illinois Bell Telephone Company, d/b/a Ameritech Illinois Proposed Implementation of High Frequency Portion of the Loop (HFPL)/Line Sharing Service
On behalf of AT&T Communications of Illinois, Inc. and Worldcom, Inc.

Before the Wisconsin Public Service Commission
Case No. 6720-TI-167
Complaint Against Ameritech Wisconsin Filed by Wisconsin Builders Association, Inc.

On behalf of Wisconsin Builders Association, Inc.

Before the Public Service Commission of South Carolina
Docket No. 2001-65-C
In the Matter of Generic Proceeding to Establish Prices For BellSouth's Interconnection Services, Unbundled Network Elements and Other Related Elements and Services
On behalf of NuVox Communications, Broadslate Networks, KMC Telecom, New South Communications, ITC^Deltacom Communications

Before the Louisiana Public Service Commission
Docket No. 27821
In the Matter of Generic Proceeding to Establish Interim and Permanent Prices for Docket No. 27821 xDSL Loops and/or Related Elements and Services
On behalf of Covad Communications

Before the Public Utility Commission of Ohio
Case No. 00-942-TP-COI
In the Matter of the Further Investigation into Ameritech Ohio's Entry into In-Region Interlata Service Under Section 271 of the Telecommunications Act of 1996
On behalf of AT&T, WorldCom and XO Communications

Before the Washington Utilities and Transportation Commission
Docket No. UT 003013, Part B
In the Matter of the Continued Costing and Pricing of Unbundled Network Elements, Transport and Termination
On behalf of Focal Communications, XO Washington, Inc.

Before the Illinois Commerce Commission
Docket No. 98-0195
Investigation into certain payphone Issues as directed in Docket No. 97-0225
On behalf of the Illinois Pay Telephone Association

Before the Alabama Public Service Commission
Docket No. 27821
Generic Proceeding to Establish Interim and Permanent Prices for xDSL Loops and/or Related Elements and Services
On behalf of The Data Coalition (Covad Communications and Broadslate Networks of Alabama, Inc.)

Before the Wisconsin Public Service Commission
Docket No. 6720-TI-160
Docket No. 6720-TI-161
Investigation Into Ameritech Wisconsin's Unbundled Network Elements
On behalf of AT&T, Worldcom, McLeodUSA, TDS Metrocom, KMC Telecom, Time Warner Telecom, Rhythms Links,

Before the Tennessee Regulatory Authority
Docket No. 00-00544
Generic Docket to Establish UNE Prices for Line Sharing per FCC 99-355, and Riser Cable and Terminating Wire as Ordered in Authority Docket No. 98-00123
On behalf of Covad Communications, Inc., Mpower Communications and BroadSlate Networks of Tennessee, Inc.

Before the Public Utilities Commission of the State of Hawaii

Docket No. 7702, Phase III
Instituting a Proceeding on Communications, Including an Investigation of the Communications Infrastructure of the State of Hawaii
On behalf of GST Telecom Hawaii, Inc.

Before the North Carolina Utilities Commission
Docket P100 Sub 133d, Phase II
General Proceeding to Determine Permanent Pricing for Unbundled Network elements
On behalf of a consortium of 13 new entrant carriers

Before the Federal Communications Commission
CCB/CPD No. 00-1
In the Matter of Wisconsin Public Service Commission Order Directing Filings
On behalf of the Wisconsin Pay Telephone Association

Before the North Carolina Utilities Commission
Docket P100 Sub 133d, Phase I
General Proceeding to Determine Permanent Pricing for Unbundled Network elements
On behalf of a consortium of 13 new entrant carriers

Before the State of New York Public Service Commission
Case No. 98-C-1357
Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements
On behalf of the CLEC Coalition

Before the Public Utilities Commission of the State of California
Rulemaking 0-02-05
Order Instituting Rulemaking on the Commission's Own Motion into reciprocal compensation for telephone traffic transmitted to Internet Service Providers modems
On behalf of ICG Telecom Group, Inc.

Before the Public Utilities Commission of the State of Colorado
Docket No. 00B-103T
In the Matter of Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with US West Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996.
On behalf of ICG Telecom Group, Inc.

Before the Delaware Public Service Commission
PSC Docket No. 00-205
For Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic – Delaware, Inc.
On behalf of Focal Communications Corporation of Pennsylvania

Before the Georgia Public Service Commission
Case No. 11641-U
Petition of Bluestar Networks, Inc. for Arbitration with BellSouthDocket No. 11641-U Telecommunications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996
On behalf of BlueStar Networks, Inc.

Before the New Jersey Board of Public Utilities
Docket No. TO00030163
For Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic-New Jersey, Inc.

On behalf of Focal Communications Corporation

Before the Pennsylvania Public Utility Commission
Docket No. A-310630F.0002
For Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic-Pennsylvania
On behalf of Focal Communications Corporation

Before the Michigan Public Service Commission
Case No. U-12287
In the matter of the application, or in the alternative, complaint of AT&T COMMUNICATIONS OF MICHIGAN, INC. against Michigan Bell Telephone Company, D/B/A, Ameritech Michigan
On behalf of AT&T Communications of Michigan, Inc.

Before the Missouri Public Service Commission
Case No. 99-483
An Investigation for the Purpose of Clarifying and Determining Certain aspects Surrounding the Provisioning Of Metropolitan Calling Area Services After the Passage and Implementation Of the Telecommunications Act of 1996
On behalf of McLeodUSA Telecommunications Services, Inc.

Before the Illinois Commerce Commission
Docket No. 98-0396
Investigation into the compliance of Illinois Bell Telephone Company with the order in Docket 96-0486/0569 Consolidated regarding the filing of tariffs and the accompanying cost studies for interconnection, unbundled network elements and local transport and termination and regarding end to end bundling issues.
On behalf of AT&T Communications of Illinois, Inc. and McLeodUSA Telecommunications Services, Inc.

Before the Illinois Commerce Commission
Docket No. 99-0593
Investigation of Construction Charges
On behalf of McLeodUSA Telecommunications Services, Inc., MCI WorldCom, Inc. and Allegiance Telecom, Inc.

Before the Public Service Commission of Wisconsin
Case No. 05-TI-283
Investigation of the Compensation Arrangements for the Exchange of Traffic Directed to Internet Service Providers
On behalf of AT&T Communications of Wisconsin, AT&T Local Services, KMC Telecom, Inc., MCI WorldCom, Inc., McLeodUSA Telecommunications Services, Inc., TDS MetroComm, Time Warner Telecom

Before the Public Utility Commission of Texas
Docket No. 21982
Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996
On behalf of ICG Communications, Inc.

Before the Public Service Commission of the Commonwealth of Kentucky
Case No. 99-498
Petition of BlueStar Networks, Inc. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996.
On behalf of BlueStar Networks, Inc.

Before the Illinois Commerce Commission
Docket No. 00-0027
Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois.
On behalf of Focal Communications Corporation of Illinois

Before The Indiana Utility Regulatory Commission
Cause No. 41570
In the Matter of the Complaint of McLeodUSA Telecommunications Services, Inc. against Indiana Bell Telephone Company, Incorporated, d/b/a Ameritech Indiana, Pursuant to the Provisions of I.C. §§ 8-1-2-54, 81-12-68, 8-1-2-103 and 8-1-2-104 Concerning the Imposition of Special Construction Charges.
On behalf of McLeodUSA Telecommunications Services, Inc.

Before the Florida Public Service Commission
Docket No. 991838-TP
Petition for Arbitration of BlueStar Networks, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996
On behalf of BlueStar Networks, Inc.

Before the Public Utility Commission of Ohio
Case No. 99-1153-TP-ARB
In the Matter of ICG Telecom Group, Inc.'s Petition For Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Ameritech Ohio
On behalf of ICG Telecom Group, Inc.

Before the Public Utility Commission of Oregon
ARB 154
Petition for Arbitration of GST Telecom Oregon, Inc. Against US West Communications, Inc. Under 47 U.S.C. §252(b)
On behalf of GST Telecom Oregon, Inc.

Before the Michigan Public Service Commission
Docket No. U-12072
In the matter of the application and complaint of WORLDCOM TECHNOLOGIES INC. (f/k/a MFS INTELENET OF MICHIGAN, INC., an MCI WORLDCOM company) against MICHIGAN BELL TELEPHONE COMPANY d/b/a AMERITEHC MICHIGAN, AMERITECH SERVICES, INC., AMERITECH INFORMATION INDUSTRY SERVICES, AND AMERITECH LONG DISTANCT INDUSTRY SERVICES relating to unbundled interoffice transport.
On behalf of WorldCom Technologies, Inc.

Before the Illinois Commerce Commission
Docket No. 99-0525
Ovation Communications, Inc. d/b/a McLeodUSA, Complaint Against Illinois Bell Telephone Company d/b/a Ameritech Illinois, Under Sections 13-514 and 13-515 of the Public Utilities Act Concerning the Imposition of Special Construction Charges and Seeking Emergency Relief Pursuant to Section 13-515(e)
On behalf of McLeodUSA

Before the Public Service Commission of the Commonwealth of Kentucky
Case No. 99-218
Petition of ICG Telecom Group, Inc. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996.
On behalf of ICG Telecom Group, Inc.

Before the Tennessee Regulatory Authority
Docket No. 1999-259-C
Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996
On behalf of ICG Communications, Inc.

Before the New Mexico Public Regulation Commission
Case No. 3131
In the Matter of GST Telecom New Mexico, Inc.'s Petition for Arbitration Against US West Communications, Inc., Under 47 U.S.C. § 252(b).
On behalf of GST Telecom New Mexico, Inc.

Before the Georgia Public Service Commission
Docket No. 10767-U
Petition of ICG Telecom Group, Inc. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996.
On behalf of ICG Telecom Group, Inc.

Before the Public Service Commission of New York
Case No. 99-C-0529
Proceeding on Motion of the Commission to Re-examine Reciprocal Compensation
On behalf of Focal Communications, Inc.

Before the Florida Public Service Commission
Docket No. 990691-TP
Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996
On behalf of ICG Telecom Group, Inc.

Before the Louisiana Public Service Commission
Docket No. U-24206
Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996
On behalf of ITC^DeltaCom, Inc.

Before the South Carolina Public Service Commission
Docket No. 199-259-C
Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996
On behalf of ITC^DeltaCom, Inc.

Before the Alabama Public Service Commission
Docket No. 27069
Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996
On behalf of ICG Telecom Group, Inc.

Before the State of North Carolina Utilities Commission
Docket No. P-582, Sub 6
Petition by ICG Telecom Group, Inc. for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996
On behalf of ICG Telecom Group, Inc.

Before the Missouri Public Service Commission

Case No. TO-99-370
Petition of BroadSpan Communications, Inc. for Arbitration of Unresolved Interconnection Issues Regarding ADSL with Southwestern Bell Telephone Company
On behalf of BroadSpan Communications, Inc.

Before the Michigan Public Service Commission
Case No. U-11831
In the Matter of the Commission's own motion, to consider the total service long run incremental costs for all access, toll, and local exchange services provided by Ameritech Michigan.
On behalf of MCIWorldCom, Inc.

Before the Illinois Commerce Commission
Docket Nos. 98-0770, 98-0771 *cons*.
Proposed Modifications to Terms and Conditions Governing the Provision of Special Construction Arrangements and, *Investigation into Tariff Governing the Provision of Special Constructions Arrangements*
On behalf of AT&T Communications of Illinois, Inc.

Before the Michigan Public Service Commission
Case No. U-11735
In the matter of the complaint of BRE Communications, L.L.C., d/b/a PHONE MICHIGAN, against Michigan Bell Telephone Company, d/b/a AMERITECH MICHIGAN, for violations of the Michigan Telecommunications Act
On behalf of BRE Communications, L.L.C.

Before the Indiana Utility Regulatory Commission
Cause No. 40830
In the Matter of the request of the Indiana Payphone Association for the Commission to Conduct an Investigation of Local Exchange Company Pay Telephone tariffs for Compliance with Federal Regulations, and to Hold Such Tariffs in Abeyance Pending Completion of Such Proceeding
On behalf of the Indiana Payphone Association

Before the Michigan Public Service Commission
Case No. U-11756
Complaint Pursuant to Sections 203 and 318 of the Michigan Telecommunications Act to Compel Respondents to Comply with Section 276 of the Federal Telecommunications Act
On behalf of the Michigan Pay Telephone Association

Before the Missouri Public Service Commission
Case No. TO-98-278
In the Matter of the Petition of Birch Telecom of Missouri, Inc., for Arbitration of the Rates, Terms, Conditions, and Related Arrangements for Interconnection with Southwestern Bell Telephone Company
On behalf of Birch Telecom of Missouri, Inc.

Before the Public Service Commission of the Commonwealth of Kentucky
Administrative Case No. 361
Deregulation of Local Exchange Companies' Payphone Services
On behalf of the Kentucky Payphone Association

Before the Public Utilities Commission of Ohio
Case No. 96-899-TP-ALT
The Application of Cincinnati Bell Telephone Company for Approval of a Retail Pricing Plan Which May Result in Future Rate Increases
On behalf of the MCI Telecommunications Corporation

Before the Public Utilities Commission of the State of Hawaii
Docket No. 7702
Instituting a Proceeding on Communications, Including an Investigation of the Communications Infrastructure of the State of Hawaii
On behalf of GST Telecom Hawaii, Inc.

Before the Michigan Public Service Commission
Case No. U-11410
In the Matter of the Petition of the Michigan Pay Telephone Association to initiate an investigation to determine whether Michigan Bell Telephone Company d/b/a Ameritech Michigan and GTE North Incorporated are in compliance with the Michigan Telecommunications Act and Section 276 of The Communications Act of 1934, as amended
On behalf of the Michigan Pay Telephone Association

Before the Indiana Utility Regulatory Commission
Cause No. 40849
In the matter of Petition of Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana for the Commission to Decline to Exercise in Whole or in Part its Jurisdiction Over, and to Utilize Alternative Regulatory Procedures For, Ameritech Indiana's Provision of Retail and Carrier Access Services Pursuant to I.C. 8-1-2.6 Et Seq.
On behalf of AT&T Communications of Indiana, Inc.

Before the Federal Communication Commission
C.C. Docket No. 97-137
In the Matter of Application by Ameritech Michigan for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Michigan.
On behalf of the AT&T Corporation

Before the Indiana Utility Regulatory Commission
Cause No. 40611
In the Matter of the Commission Investigation and Generic Proceeding on Ameritech Indiana's Rates for Interconnection, Service, Unbundled Elements and Transport and Termination under the Telecommunications Act of 1996 and Related Indiana Statutes
On behalf of the MCI Telecommunications Corporation

Before the Public Utility Commission of Ohio
Case No. 97-152-TP-ARB
In the matter of the petition of MCI Telecommunications Corporation for arbitration pursuant to section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement with Cincinnati Bell Telephone Company
On behalf of the MCI Telecommunications Corporation

Before the Michigan Public Service Commission
Case No. U-11280
In the matter, on the Commission's own motion to consider the total service long run incremental costs and to determine the prices of unbundled network elements, interconnection services, and basic local exchange services for AMERITECH MICHIGAN
On behalf of the MCI Telecommunications Corporation

Before the Illinois Commerce Commission
Docket No. 96-0486
Investigation into forward looking cost studies and rates of Ameritech Illinois for interconnection, network elements, transport and termination of traffic

On behalf of the MCI Telecommunications Corporation

Before the Public Utility Commission of Ohio
Case No. 96-922-TP-UNC
In the Matter of the Review of Ameritech Ohio's Economic Costs for Interconnection, Unbundled Network Elements, and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic
On behalf of the MCI Telecommunications Corporation

Before the New Jersey Board of Public Utilities
Docket No. TX95120631
In the Matter of the Investigation Regarding Local Exchange Competition for Telecommunications Services
On behalf of the MCI Telecommunications Corporation

Before the Michigan Public Service Commission
Case No. U-11104
In the matter, on the Commission's Own Motion, to Consider Ameritech Michigan's Compliance With the Competitive Checklist in Section 271 of the Telecommunications Act of 1996
On behalf of AT&T Communications of Indiana, Inc.

Before the Public Utility Commission of Ohio
Case Nos. 96-702-TP-COI, 96-922-TP-UNC, 96-973-TP-ATA, 96-974-TP-ATA, Case No. 96-1057-TP-UNC
In the Matter of the Investigation Into Ameritech Ohio's Entry Into In-Region InterLATA Services Under Section 271 of the Telecommunications Act of 1996.
On behalf of AT&T Communications of Ohio, Inc.

Before the Illinois Commerce Commission
Docket No. 96-0404
Investigation Concerning Illinois Bell Telephone Company's Compliance With Section 271(c) of the Telecommunications Act of 1996
On behalf of AT&T Communications of Illinois, Inc.

Before the Commonwealth of Massachusetts Department of Public Utilities
In the Matter of: D.P.U. 96-73/74, D.P.U. 96-75, D.P.U. 96-80/81, D.P.U. 96-83, D.P.U. 96-94, NYNEX - Arbitrations
On behalf of the MCI Telecommunications Corporation

Before the Pennsylvania Public Utility Commission
Docket No. A-31023670002
In the Matter of the Application of MCI Metro Access Transmission Services, Inc. For a Certificate of Public Convenience and Necessity to Provide and Resell Local Exchange Telecommunications Services in Pennsylvania
On behalf of MCImetro Access and Transmission Services, Inc.

Before the New Jersey Board of Public Utilities
Docket No. TO96080621
In the Matter of MCI Telecommunications Corporation for Arbitration with Bell Atlantic-New Jersey, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996
On behalf of the MCI Telecommunications Corporation

Before the Indiana Utility Regulatory Commission
Cause No. 40571-INT-01

Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Wisconsin Bell Telephone Company d/b/a Ameritech Wisconsin
On behalf of AT&T Communications of Wisconsin, Inc.

Before the Public Utility Commission of Ohio
Case No. 96-752-TP-ARB
Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Ohio Bell Telephone Company d/b/a Ameritech Ohio
On behalf of AT&T Communications of Ohio, Inc.

Before the Illinois Commerce Commission
Docket No. 96-AB-003
Docket No. 96-AB-004 *Consol.*
Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Illinois Bell Telephone Company d/b/a Ameritech Illinois
On behalf of AT&T Communications of Illinois, Inc.

Before the Michigan Public Service Commission
Case No. U-11151
Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Michigan Bell Telephone Company d/b/a Ameritech Michigan
On behalf of AT&T Communications of Michigan, Inc.

Before the Indiana Utility Regulatory Commission
Cause No. 40571-INT-01
In the Matter of the Petition of AT&T Communications of Indiana, Inc. Requesting Arbitration of Certain Terms and Conditions and Prices for Interconnection and Related Arrangements from Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to Section 252 (b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996.
On behalf of AT&T Communications of Indiana, Inc.

Before the Missouri Public Service Commission
Case No. TT-96-268
Application of Southwestern Bell Telephone Company, Inc. to Revise P.S.C. Mo.-No. 26, Long Distance Message Telecommunications Service Tariff to Introduce the Designated Number Optional Calling Plan
On behalf of the MCI Telecommunications Corporation

Before the Corporation Commission of the State of Oklahoma
Cause No. PUD 950000411
Application of Southwestern Bell Telephone Company for an Order Approving Proposed Revisions in Applicant's Long Distance Message Telecommunications Service Tariff
Southwestern Bell Telephone Company's Introduction of 1+ Saver Direct^{sm}
On behalf of the MCI Telecommunications Corporation

Before the Georgia Public Service Commission
Docket No. 6415-U and 6537-U *cons*.
Petition of MCImetro to Establish Nondiscriminatory Rates, Terms and Conditions for the Unbundling and Resale of Local Loops
On behalf of MCImetro Access Transmission Services

Before the Public Service Commission of the State of Mississippi
Docket No. 95-UA-358
Regarding a Docket to Consider Competition in the Provision of Local Telephone Service
On behalf of the Mississippi Cable Television Association

Before the Maryland Public Service Commission
Docket No. 8705
In the Matter of the Inquiry Into the Merits of Alternative Plans for New Telephone Area Codes in Maryland
On behalf of the Staff of the Maryland Public Service Commission

Before the Maryland Public Service Commission
Docket No. 8584, Phase II
In the Matter of the Application of MFS Intelenet of Maryland, Inc. for Authority to Provide and Resell Local Exchange and Inter-Exchange Telephone Service; and Requesting the Establishment of Policies and Requirements for the Interconnection of Competing Local Exchange Networks

In the Matter of the Investigation of the Commission on its Own Motion Into Policies Regarding Competitive Local Exchange Telephone Service
On behalf of the Staff of the Maryland Public Service Commission

Before the Illinois Commerce Commission
Docket No. 94-0400
Application of MCImetro Access and Transmission Services, Inc. For a Certificate of Exchange Service Authority Allowing it to Provide Facilities-Based Local Service in the Chicago LATA
On behalf of the Office of Policy and Planning, Illinois Commerce Commission

Before the Illinois Commerce Commission
Docket No. 94-0315
Petition of Ameritech-Illinois for 708 NPA Relief by Establishing 630 Area Code
On behalf of the Office of Policy and Planning, Illinois Commerce Commission

Before the Illinois Commerce Commission
Docket No. 94-0422
Complaints of MFS, TC Systems, and MCI against Ameritech-Illinois Regarding Failure to Interconnect
On behalf of the Office of Policy and Planning, Illinois Commerce Commission

Before the Illinois Commerce Commission
Docket Nos. 94-0096, 94-0117, and 94-301
Proposed Introduction of a Trial of Ameritech's Customers First Plan in Illinois, et al.
On behalf of the Office of Policy and Planning, Illinois Commerce Commission

Before the Illinois Commerce Commission
Docket No. 94-0049
Rulemaking on Line-Side and Reciprocal Interconnection
On behalf of the Office of Policy and Planning, Illinois Commerce Commission

Before the Illinois Commerce Commission
Docket No. 93-0409
MFS-Intelenet of Illinois, Inc. Application for an Amendment to its Certificate of Service Authority to Permit it to Operate as a Competitive Local Exchange Carrier of Business Services in Those Portions of MSA-1 Served by Illinois Bell Telephone and Central Telephone Company of Illinois
On behalf of the Office of Policy and Planning, Illinois Commerce Commission

Before the Illinois Commerce Commission
Docket No. 94-0042, 94-0043, 94-0045, and 94-0046

Illinois Commerce Commission on its own motion. Investigation Regarding the Access Transport Rate Elements for Illinois Consolidated Telephone Company (ICTC), Ameritech-Illinois, GTE North, GTE South, and Central Telephone Company (Centel)
On behalf of the Office of Policy and Planning, Illinois Commerce Commission

Before the Illinois Commerce Commission
Docket No. 93-0301 and 94-0041
GTE North Incorporated. Proposed Filing to Restructure and Consolidate the Local Exchange, Toll, and Access Tariffs with the Former Contel of Illinois, Inc.
On behalf of the Office of Policy and Planning, Illinois Commerce Commission

Before the Public Service Commission of the State of Missouri
Case No. TC-93-224 and TO-93-192
In the Matter of Proposals to Establish an Alternate Regulation Plan for Southwestern Bell Telephone Company
On behalf of the Telecommunications Department, Missouri Public Service Commission

Before the Public Service Commission of the State of Missouri
Case No. TO-93-116
In the Matter of Southwestern Bell Telephone Company's Application for Classification of Certain Services as Transitionally Competitive
On behalf of the Telecommunications Department, Missouri Public Service Commission

Selected Reports, Invited Presentations and Publications, etc.

Cost of Performance
Multi-State Tax Commission
Winter Informational and Training Session for State Attorneys
Invited Speaker
March 2016

Software-Defined Networking
An Overview of How Advances in Software-Defined Networking and Network Function Virtualization are Impacting IP-Based Telecommunications Networks
Prepared for the United States General Services Administration
June 2015

US Patent Application No. 61825684 (May 21, 2013)
Quickchat Mobile Application
Provisional Patent Application
U.S. Patent and Trademark Office

Originating Caller Identification Code ("OCIC")
Competing Submission
Federal Trade Commission's *Robocall Challenge*
January 2013

In Band Auction Cap; Promoting Sustainable Competition in the Canadian Mobile Wireless Industry Through an Equitable Auction Design
Presented to Industry Canada (Consultation Notice SMSE-018-10); *Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum*
April 2011

Exchange Access Rates for Competitive Local Exchange Carriers
A Basis for Economically Rational Pricing Policies
Presented to the FCC (and various state agencies), CC Docket No. 01-92
August 2008

IP-Enabled Voice Services
Impact of Applying Switched Access Charges to IP-PSTN Voice Services
QSI Technical Document 012605A
Presented to the FCC Wireline Competition Bureau, Docket Nos. 04-36, 03-266
Washington, D.C., January 2006

Litigating Telecommunications Cost Cases
TELRIC Principles and Other Sources of Enlightenment
Two Day Teaching Seminar for Public Utility Commissions and their Staff (Western States)
Denver, Colorado, February 5&6, 2002

Interconnect Pricing
Critique of FCC Working Paper Nos. 33 & 34

NARUC Winter Meeting 2001
Washington, D.C., February 25, 2001

Telecommunications Costing and Pricing
Interconnection and Inter-Carrier Compensation
Advanced Regulatory Studies Program
Michigan State University
Cincinnati, Ohio, October 13, 2000

Telecommunications Pricing in Tomorrow's Competitive Local Market
Professional Pricing Societies 9th Annual Fall Conference
Pricing From A to Z
Chicago, Illinois, October 30, 1998

Recombining Unbundled Network Elements: An Alternative to Resale
ICM Conferences' Strategic Pricing Forum
January 27, 1998, New Orleans, Louisiana

MERGERS – Implications of Telecommunications Mergers for Local Subscribers
National Association of State Utility Consumer Advocates Mid-Year Meeting,
Chicago, Illinois, June 24 1996

Unbundling, Costing and Pricing Network Elements in a Co-Carrier World
Telecommunications Reports' Rethinking Access Charges & Intercarrier Compensation
Washington, D.C., April 17, 1996

Key Local Competition Issues Part I (novice)
Key Local Competition Issues Part II (advanced)
with Mark Long
National Cable Television Associations' 1995 State Telecommunications Conference
Washington, D.C., November 2, 1995

Competition in the Local Loop
New York State Telephone Association and Telephone Association of New England Issues Forum
Springfield, Massachusetts, October 18, 1995

Compensation in a Competitive Local Exchange
National Association of Regulatory Utility Commissioner Subcommittee on Communications' Summer Meetings
San Francisco, California, July 21, 1995

Fundamentals of Local Competition and Potential Dangers for Interexchange Carriers
COMPTEL 1995 Summer Business Conference
Seattle, Washington, June 12, 1995

Before the FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of

AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(202) 457-3090

Complainant,

v.

GREAT LAKES COMMUNICATION CORP.
1713 McNaughton Way
Spencer, IA 51301
(712) 580-4700

Defendants,

File No. EB-16-MD-001

DECLARATION OF MICHAEL STARKEY

EXHIBIT B

HIGHLY CONFIDENTIAL

Before the FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of

AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(202) 457-3090

Complainant,

v.

GREAT LAKES COMMUNICATION CORP.
1713 McNaughton Way
Spencer, IA 51301
(712) 580-4700

Defendants,

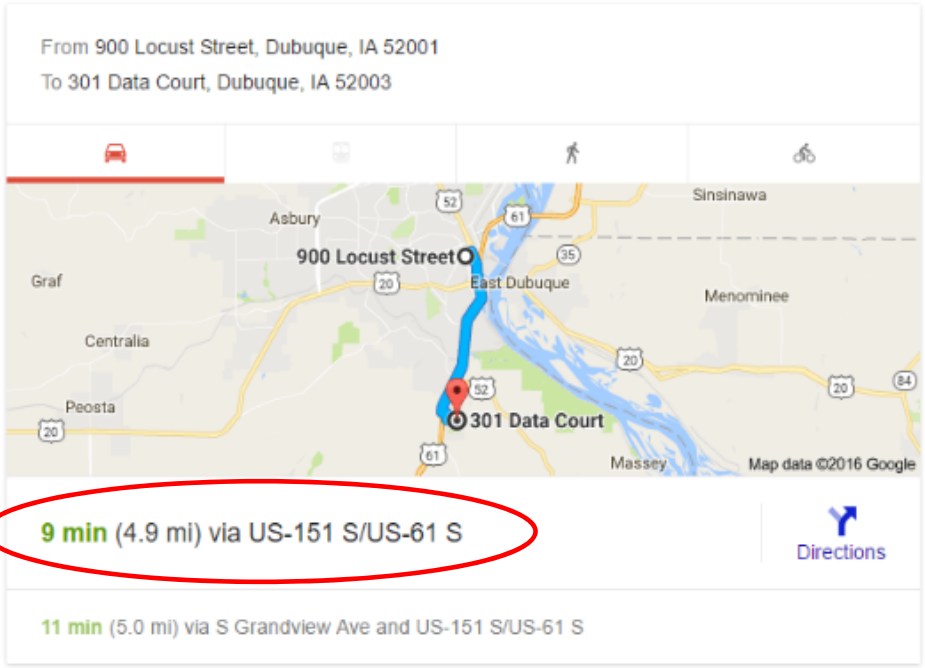
File No. EB-16-MD-001

DECLARATION OF MICHAEL STARKEY

EXHIBIT C

Potential Construction Charges based on CenturyLink Tariff

CenturyLink Tariff F.C.C. No. 12			
Case No. 39			Source
Total Special Construction Charges:	$375,537.22	Line 1	Case No. 39
Case preparation charge:	$238.22	Line 2	Case No. 39
Non-Case Prep. Charges:	$375,299.00	Line 3	Line 1 - Line 2
Mileage:	4.9	Line 4	See below
Feet:	25,872	Line 5	Line 4 x 5,280 ft/mile
$/ft. :	**$14.51**	Line 6	Line 3 / Line 5
Habiak Hypothetical			
Mileage:	78	Line 7	AT&T Calculated mileage (Exhibit 91)
Feet:	411,840	Line 8	Line 7 x 5,280 ft/mile
$/ft. :	**$14.51**	Line 9	Line 6
Case preparation charge:	$238.22	Line 10	Line 2
Total Special Construction Charges:	**$5,974,385.57**	Line 11	(Line 8 x Line 9) + Line 10



SPECIAL CONSTRUCTION

9. CHARGES TO PROVIDE PERMANENT FACILITIES

9.1 IOWA (Cont'd)

CASE NO: 39
CUSTOMER: AT&T
DESCRIPTION: Special construction for the installation of 24 fiber to be placed in extruded innerduct for the provision of 1 OC3 SHNS with 30 DS1's from the Company central office located at 900 Locust Street, Dubuque, IA to the customer's location at 301 Data Court, Dubuque, IA. A total charge of $375,537.22 (which includes a $238.22 Case Preparation Charge) is due and payable in a one-time, up-front payment.

REFERENCE: IA0302852
NONRECURRING CHARGE: $375,537.22

CASE NO: 40
CUSTOMER: WorldCom-WTL
DESCRIPTION: Special construction for the conditioning of copper facilities and the installation of electronics to provide a suitable circuit path for the provision of DS1 level service from the customer's location at 3389 335th St., Waukee, IA to the Company central office located at 645 Walnut St., Waukee, IA. A total charge of $2,169.25 (which includes a $238.22 Case Preparation Charge) is due and payable in a one-time, up-front payment.

REFERENCE: C04040635
NONRECURRING CHARGE: $2,169.25

CASE NO: 41
CUSTOMER: GTE MobilNet
DESCRIPTION: Special construction for the conditioning of copper facilities and the installation of electronics to provide a suitable circuit path for the provisioning of DS1 level service from the customer's location at 1521 Vail Ave., Muscatine, IA to the Company central office located at 420 Sycamore St., Muscatine, IA. A total charge of $5,323.00 (which includes a $238.22 Case Preparation Charge) is due and payable in a one-time, up-front payment.

REFERENCE: C04070811
NONRECURRING CHARGE: $5,323.00

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(202) 457-3090

Complainant,

v. **File No. EB-16-MD-001**

GREAT LAKES COMMUNICATION CORP.
1501 35th Avenue, W
Spencer, IA 51301
(712) 580-4700

Defendant.

GREAT LAKES COMMUNICATION CORP. INFORMATION DESIGNATION

Pursuant to 47 C.F.R. § 1.724(f) and (g), Great Lakes Communication Corp. ("Great Lakes") submits this information designation.

I. Individuals Believed to Have Firsthand Knowledge, Rule 1.724(f)(1)

In accordance with 47 C.F.R. § 1.724(f)(1), set forth below are the names, addresses, and positions of individuals at Great Lakes who have firsthand knowledge of the facts alleged with particularity in the Answer, along with a description of the facts within each individual's knowledge. Great Lakes has also identified the expert witnesses it presented in the underlying litigation.

Name:	Joshua Nelson
Position:	Chief Executive Officer, Great Lakes
Address:	1501 35th Avenue West Spencer, Iowa 51301 (West Industrial Park)
Description of the facts within this person's knowledge:	Great Lakes' general business operations, interstate tariff, and contractual arrangements with its carrier customers and end user customers; Great Lakes' provision of services to AT&T; Great Lakes' invoices billed to AT&T
Name:	Kellie Beneke
Position:	President, Great Lakes
Address:	1501 35th Avenue West Spencer, Iowa 51301 (West Industrial Park)
Description of the facts within this person's knowledge:	Great Lakes' general business operations, interstate tariff, and contractual arrangements with end user customers; Great Lakes' provision of services to AT&T; Great Lakes' invoices billed to AT&T
Name:	Warren Fischer
Position:	Expert Witness
Address:	2500 Cherry Creek Drive South, Unit 319 Denver, Colorado 80209
Description of the facts within this person's knowledge:	Accounting, financial and associated regulatory compliance issues for incumbent and competitive local exchange carriers and IXCs, including financial matters related to access services provided by those carriers; Great Lakes' bills and payments; Great Lakes' interstate tariff; damages owed by AT&T to Great Lakes
Name:	Michael Starkey
Position:	Expert Witness
Address:	243 Dardenne Farms Drive Cottleville, Missouri 63304-1002
Description of the facts within this person's knowledge:	Operations and regulatory obligations of incumbent and competitive local exchange carriers and IXC, including intercarrier compensation and access service; Great Lakes' provision of access service to AT&T consistent with its tariff; Great Lakes' interstate tariff; the benefit to AT&T of Great Lakes' services to AT&T

II. Description of Documents, Data Compilations and Tangible Things, Rule 1.724(f)(2)

In accordance with 47 C.F.R. § 1.724(f)(2), and the Commission's August 9, 2016 order granting AT&T's request for a partial waiver of that provision, Great Lakes refers the Commission to the exhibit lists exchanged by the parties on June 24, 2015, as part of their

Proposed Final Pre-Trial Order, which are attached to the Complaint and include Great Lakes' exhibit list, AT&T's exhibit list, and the parties' joint exhibit list. Additional relevant documents are identified in Great Lakes' Answer and its Legal Analysis. Apart from those already attached to AT&T's Formal Complaint and cited in support of Great Lakes' Answering Submission, Great Lakes has attached any additional documents to its Answer. Many of the exhibits attached to the Answer and documents described in the parties' exhibit lists contain Confidential Information and/or Highly Confidential Information, as those terms are defined in the Protective Order that the Commission entered on June 2, 2016.

III. Manner of Identifying Persons with Knowledge and Designating Documents, Data Compilations, and Tangible Things, Rule 1.724(f)(3)

In accordance with 47 C.F.R. § 1.724(f)(3), Great Lakes provides the following description of the manner in which it identified all persons with information and designated all documents, data compilations and tangible things as being relevant to this dispute. Great Lakes' outside counsel, Innovista Law PLLC, prepared this Information Designation in cooperation with Great Lakes' management and employees. Innovista Law PLLC identified and contacted the individuals who have firsthand knowledge of the relevant facts. These individuals identified documents and records in their possession relevant to the facts set forth in the Answer. The materials attached as exhibits to the Answer were collected from the following sources: the files of Joshua Nelson; the files of Kellie Beneke. Other materials were either obtained from AT&T through discovery, identified in connection with the underlying litigation, or identified in connection with preparing Great Lakes' response. Innovista Law PLLC collected any public source materials cited in the Answer.

IV. Documents Relied Upon, Rule 1.724(g)

In accordance with 47 C.F.R. § 1.724(g), attached as exhibits to the Answer are copies of all affidavits, documents, data compilations, and tangible things, excluding those already attached to AT&T's Complaint, that are in Great Lakes' possession, custody or control and upon which Great Lakes relies or intends to rely to support the facts alleged and legal arguments made in its Answer. The exhibits have been served, along with the Answer, upon counsel for AT&T Corp.

DATED: September 15, 2016

Respectfully submitted,

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G. David Carter
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COUNSEL FOR GREAT LAKES COMMUNICATION CORP.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(202) 457-3090

Complainant,

v. **File No. EB-16-MD-001**

GREAT LAKES COMMUNICATION CORP.
1501 35th Avenue, W
Spencer, IA 51301
(712) 580-4700

Defendant.

GREAT LAKES COMMUNICATION CORP.'S OPPOSITION AND OBJECTIONS TO AT&T CORP.'S FIRST REQUEST FOR INTERROGATORIES

Pursuant to 47 C.F.R. § 1.729(c), Defendant Great Lakes Communication Corp. ("Great Lakes" or "GLCC") submits the following opposition and objections to AT&T's First Request for Interrogatories.

GENERAL OBJECTIONS

In addition to the specific objections set forth below, Great Lakes objects generally as follows:

1. Great Lakes generally objects to any interrogatory to the extent it seeks information that is not relevant to the material facts in dispute and necessary to the resolution of the dispute, or is otherwise inconsistent with 47 C.F.R. § 1.729.

2. Great Lakes generally objects to any interrogatory that seeks information that is not in the possession, custody, or control of Great Lakes.

3. Great Lakes generally objects to any interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, or other judicially recognized privilege.

4. Great Lakes generally objects to any interrogatory that seeks proprietary and confidential information and/or trade secrets. Notwithstanding this objection, to the extent the Commission determines that discovery of such information or documents is necessary, Great Lakes is willing to provide the requested discovery pursuant to the terms of the parties' Protective Order in this proceeding.

5. Great Lakes generally objects to any interrogatory that requests additional discovery through production of documents. Great Lakes opposes AT&T's request for documents because AT&T has not provided a valid explanation of why the documents sought by AT&T are "necessary to the resolution of the dispute." 47 C.F.R. § 1.729(b). The documents provided with the Complaint and Answer are sufficient for the Commission to resolve this dispute, consistent with the agency's fact-pleading process for resolution of formal complaints. *See Implementation of the Telecommunications Act of 1996*, *Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 F.C.C. Rcd. 22497, 22529 ¶¶ 70-71, 22534 ¶81 (1997). Great Lakes further objects to AT&T's document requests because documents are not necessary to provide responsive information to any of the interrogatories. AT&T's document requests are overly broad, and the burden production would impose on Great Lakes outweighs AT&T's need for discovery of the documents it requests.

6. Great Lakes generally objects to the interrogatories because AT&T has exceeded its limit of ten written interrogatories. *See* 47 C.F.R. § 1.729(a). In particular, Interrogatories ATT-GLCC 7, 8, and 9 have multiple sub-parts and/or present both an interrogatory request and a request for production of documents. Thus, AT&T has exceeded the permissible limit under Section 1.729(a) of the Commission's rules. *See id.* ("Subparts of any interrogatory will be counted as separate interrogatories for purposes of compliance with this limit.").

OBJECTIONS TO DEFINITIONS

1. Great Lakes generally objects the Definitions to the extent they purport to require Great Lakes to provide information or documents not currently within its possession, custody, or control.

2. Great Lakes objects to Definition No. 8 insofar as mischaracterizes any of Great Lakes' high-volume customers as "Free Calling Parties."

OBJECTIONS TO INSTRUCTIONS

1. Great Lakes generally objects to Instruction No. 1 to the extent it places an undue burden on Great Lakes and requires Great Lakes to supplement its responses beyond what is required by 47 C.F.R. § 1.720(g).

2. Great Lakes objects to Instruction No. 2; demanding Great Lakes to "[p]rovide all information, including all documents, related to answering the interrogatory" renders each interrogatory vague, unintelligible, without limit, unduly burdensome, and objectionable insofar as it purports to demand the production of information or communications protected by the attorney-client privilege and work-product doctrine.

3. Great Lakes generally objects to Instruction No. 12 to the extent it seeks information beyond what is required by 47 C.F.R. § 1.729.

OBJECTIONS TO SPECIFIC INTERROGATORIES

ATT-GLCC 1:

Identify and produce all agreements or contracts that were in effect during the Relevant Period and that relate to Termination Services.

OBJECTIONS: Great Lakes objects to this interrogatory because it relates to a claim with no legal merit, Count I of AT&T's Formal Complaint. In justifying this interrogatory, AT&T states that this information is necessary to resolve its claim that Great Lakes' refusal to provide a direct-trunked transport service to AT&T was unjust and unreasonable in violation of Section 201(b) of the Communications Act. As explained in greater detail in its accompanying Legal Analysis, Section I, Great Lakes has no legal duty to provide AT&T with a direct connect service generally, or at the rate in CenturyLink's access tariff specifically. To the contrary, Great Lakes' tariffed access service has at all times complied with the Commission's CLEC access charge benchmarking rules.[1] Moreover, AT&T knows that Count I of is Complaint is legally defective; its declarant in this proceeding, Mr. Habiak, has testified as follows:

> Establishing a connection between two networks is expensive, and it requires time and the cooperation of *both* parties. **LECMI [a CLEC] has no obligation to establish a "direct" connection with AT&T Corp. or any other IXC, and no obligation to route traffic over such a connection if there were one. And obviously, LECMI has no incentive to establish a "direct" connection that results in much lower access revenues to itself** or cuts off its share of the Complainants' access revenues; to the contrary, **LECMI's natural self-interest creates an affirmative incentive *against* cooperation.**[2]

Even if Count I were not legally defective, this interrogatory seeks information and documents that are not relevant to the material facts in dispute in this proceeding or necessary to

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1 *See* 47 C.F.R. § 61.26.

2 **Exhibit 1**, Rebuttal Testimony of John W. Habiak, on behalf of AT&T Corp, in Michigan Public Service Commission Case No. U-17619, at 4-5 (Sept. 11, 2014) (emphasis added in bold).

the resolution of the dispute. Any agreements or contracts Great Lakes may have with other entities relating to Termination Services have no bearing on whether Great Lakes has a legal duty under the Communications Act and the Commission's rules and implementing orders to establish a direct connection with AT&T.

Finally, in its explanation in support of this request, AT&T claims that in "some cases" least cost routing providers have represented that they are able to complete calls to carriers engaged in access stimulation, which AT&T believes to have been accomplished through agreements for Termination Services. AT&T has offered no evidence to justify its suspicions or support this allegation. Nor has AT&T shown that any such agreements would be relevant to a CLEC's obligation to provide direct-trunk transport service. Accordingly, Great Lakes objects to providing the information and documents requested by this interrogatory.

AT&T-GLCC 2:

Identify and produce all communications and correspondence during the Relevant Period regarding Termination Services, including but not limited to any proposed Termination Services involving AT&T that have not been Previously Produced.

OBJECTIONS: Great Lakes objects to this interrogatory for all of the reasons set forth in its objections to Interrogatory AT&T-GLCC 1. Great Lakes further objects because this request is overly broad and unduly burdensome. AT&T's request covers "all communications and correspondence" from December 29, 2011 to the present (a period of almost five years) regarding Termination Services, which AT&T has broadly defined in its request as "any service provided by any entity to deliver, in any form including but not limited to either a TDM or IP connection, a long-distance telephone call from an interexchange carrier to GLCC for termination to any of its Free Calling Parties." The overbreadth of this definition would encompass "any entity" who delivers long-distance calls to Great Lakes for termination, which is every carrier that Great Lakes exchanges traffic with, including INS or any of the carriers with which Great Lakes is a party to an IP Termination Services agreement, such that this request is effectively asking for every communication that Great Lakes has had with INS, any IXC or VoIP provider who hands off traffic to Great Lakes. This overbroad request would require Great Lakes to undertake the enormous burden of reviewing emails spanning half of a decade to identify communications have no bearing on this case.

ATT-GLCC 3:

Identify and produce all studies or other analyses of the feasibility and/or costs of Termination Services.

OBJECTIONS: Great Lakes objects to this interrogatory for all of the reasons set forth in its objections to Interrogatories AT&T-GLCC 1 and 2.

Subject to and without waiving its objections, Great Lakes states that there are no such studies or other analyses in its custody, possession, or control.

ATT-GLCC 4:

With respect to any Marketing Agreements or Telecommunications Service Agreements between GLCC and its Free Calling Parties that were identified or produced in the underlying litigation, have any of those Agreements been amended or modified in any respect? If so, for each such Agreement, identify the specific amendments or modifications and produce a copy of the amended or modified Agreement.

OBJECTIONS: Great Lakes objects to this interrogatory because it seeks information and documents that are not relevant to the material facts in dispute in this proceeding or necessary to the resolution of the dispute. Great Lakes has already produced voluminous documents to AT&T, including dozens of Marketing Agreements and Telecommunications Service Agreements.[3] Additional discovery beyond what Great Lakes has already produced is not necessary for the Commission to resolve the dispute as to whether Great Lakes' conferencing customers are end users under its Tariff.

Great Lakes further objects insofar as the interrogatory is vague as to its identification of which agreements "were identified or produced in the underlying litigation." In its definition of "Free Calling Party," AT&T lists companies it contends were identified in the underlying litigation; however, that list excludes certain conferencing customers with agreements that Great Lakes produced in the underlying litigation.[4] Great Lakes objects to the extent that AT&T's request is ambiguous or redundant. Great Lakes further objects to the request as futile, because regardless of the terms of Great Lakes' arrangements with its customers, AT&T invents ever more absurd and tortured constructions of them, such that it is futile to respond to this request,

---

[3] *See, e.g.*, **Exhibit 10**, Starkey Report at Exhibit C (summary of Marketing Agreements and Telecommunications Service Agreements that Great Lakes entered into with its conferencing customers).

[4] *See* Joint Exhibit List, Exhibit Nos. 2004(cc), 2004(dd), 2004(ee).

for even if they recited that the parties were contracting for Great Lakes' provision of "telecommunications services," and the invoices recited that they were issued by Great Lakes "for telecommunications services rendered," and the customer paid them, AT&T would doubtless find some other meritless excuse to attack the plain terms of those records.

ATT-GLCC 5:

Has GLCC entered into any Marketing Agreement or Telecommunications Services Agreement with Free Calling Parties that was [*sic*] not identified in the underlying litigation? If so, identify and produce each such Agreement.

OBJECTIONS: Great Lakes objects to this interrogatory for the same reasons set forth in its objections to ATT-GLCC 4.

ATT-GLCC 6:

As regards GLCC's Marketing Agreements with Free Calling Parties, state by year (for the period from January 1, 2012 to the present) the total amounts paid by GLCC to its Free Calling Parties pursuant to those Agreements.

OBJECTIONS: Great Lakes objects to this interrogatory because it seeks information and documents that are not relevant to the material facts in dispute in this proceeding or necessary for resolution of the dispute. Great Lakes has complied with the Commission's access charge benchmarking rules as they apply to CLECs engaging in access stimulation by lowering its switched exchange access rates to match CenturyLink's rates for the services listed in 47 C.F.R. § 61.26(a)(3)(i).[5] Great Lakes has admitted that the Marketing Agreements are access-revenue-sharing agreements and that it is engaged in "access stimulation" as defined by 47 C.F.R. § 61.3(bbb).[6] Therefore, Great Lakes objects to this interrogatory because the fact that Great Lakes pays its conferencing customers pursuant to Marketing Agreements is not in dispute in this proceeding.

Great Lakes further objects because the "total amounts" paid "by year" under Great Lakes' Marketing Agreements since January 1, 2012 are irrelevant to AT&T's allegation that the calls for which Great Lakes billed AT&T were not terminated to end users. Moreover, AT&T has not tendered payment to Great Lakes for any of the charges it billed since early 2012. As a result, only a *de minimis* amount of the payments made by Great Lakes to its conferencing customers since that time could possibly relate to AT&T, and such payments are dramatically dwarfed by the enormous amount of revenue that AT&T has generated and unjustly withheld by carrying retail and wholesale traffic bound for Great Lakes.

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5 47 C.F.R. § 61.26(g); Answer at ¶ 4; Legal Analysis § I.

6 *See* Answer ¶¶ 25, 42.

ATT-GLCC 7:

As regards GLCC's Telecommunications Services Agreements with its Free Calling Parties, has GLCC billed, and have the Free Calling Parties paid, all amounts owed pursuant to those Agreements? If so, state by year (for the period from January 1, 2012 to the present) both the total amounts billed by GLCC and the total amounts paid by the Free Calling Parties pursuant to those Agreements. If any amounts were either not billed or not paid under those Agreements, state by year (for the period from January 1, 2012 to the present), both the amounts that were not billed and the amounts that were not paid, and explain why those amounts were either not billed or not paid.

OBJECTIONS: Great Lakes objects to this interrogatory insofar as it seeks "by year" the "total amounts" billed by Great Lakes and paid by its conferencing customers pursuant to Telecommunications Services Agreements, which are not relevant to the material facts in dispute in this proceeding or necessary for resolution of the dispute. To the extent this interrogatory is seeking information on the timing of Great Lakes' collections and accounts receivable turnover, such information is also irrelevant to whether Great Lakes' customers ultimately pay a fee for telecommunications service.

Great Lakes further objects to this interrogatory insofar as it seeks information that has already been produced to AT&T in the underlying litigation. Great Lakes has already produced voluminous documents to AT&T responsive to this interrogatory, including the invoices sent to its conferencing customers and documentation verifying Great Lakes' receipt of payment from these customers for telecommunications services. In his August 18, 2014 Expert Report, Great Lakes' expert, Michael Starkey, described and catalogued his review of Great Lakes' agreements, invoices, and payment documentation, covering invoices from January 2012 through

July 2014, in support of his conclusion that each customer paid Great Lakes a fee for the telecommunications services they were provided.[7] AT&T's proffered expert, Dr. Toof, has indicated that he reviewed and relied upon the documents listed in Exhibits C and D to Mr. Starkey's report.[8] As AT&T has had these documents, along with Mr. Starkey's summary in Exhibit D, in its custody and possession for over two years, Great Lakes objects to providing any billing or payment information before August 2014, including the "total amounts" billed and paid for the years 2012 and 2013.

Subject to and without waiving these objections, Great Lakes affirms that its conferencing customers have consistently been billed and paid Great Lakes a monthly fee for the services Great Lakes provides them under its Telecommunications Services Agreements.[9] Great Lakes is willing to respond to this interrogatory with summary information covering the period August 2014 to the present.

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[7] *See* **Exhibit 10**, Starkey Report at 7-8; *id.* at Exhibit C (summary of Marketing Agreements and Telecommunications Service Agreements that Great Lakes entered into with its conferencing customers); *id.* at Exhibit D (summary of invoices and payments, along with the associated Bates numbers correlating to Great Lakes' document production in the underlying litigation).

[8] **Exhibit 13**, Toof Dep. Tr. 39:24-41:2.

[9] *See* Answer ¶¶ 5, 44; Legal Analysis § II.

ATT-GLCC 8:

As regards amounts that GLCC has collected from its Free Calling Parties in connection with its Telecommunications Services Agreements, has GLCC paid any taxes to the State of Iowa relating to such amounts? If so, state by year (for the period from January 1, 2012 to the present) the amounts that were paid in taxes and the basis for such payments. If not, state the reasons why such payments were not made.

OBJECTIONS: Great Lakes objects to this interrogatory because it seeks information that is not relevant to the material facts in dispute in this proceeding or necessary for resolution of the dispute. The collection and payment of taxes under Iowa state law bears no relation to whether a customer is an end user under Great Lakes' Tariff, or whether an interexchange carrier is responsible for paying for tariffed interstate access services under federal telecommunications law. Great Lakes' basis for payment or nonpayment of those taxes is not relevant to the FCC's determination of whether Great Lakes' customers paid it a fee for telecommunication service. In particular, the total amount of taxes that Great Lakes paid each year to the state of Iowa has no bearing on any issues in dispute in this proceeding.

ATT-GLCC 9:

As regards amounts that GLCC has collected from its Free Calling Parties in connection with its Telecommunications Services Agreements, has any of that revenue been reported as interstate revenue on a Form 499 that GLCC has filed with the Commission? If so, state by year (for the period 2012 to the present) the amount of such revenue that was reported as interstate revenue. If not, explain why such revenue was not reported as interstate revenue.

OBJECTIONS: Great Lakes objects to this interrogatory because it seeks information that is not relevant to the material facts in dispute in this proceeding or necessary for resolution of the dispute. The total amount of annual revenue reported by Great Lakes on its Form 499s associated with the customers AT&T refers to as "Free Calling Parties" bears no relation to whether any individual customer is an end user under Great Lakes' tariff.

Subject to and without waiving its objections, as explained in more detail in the Answer, Great Lakes properly reports its revenue data to the FCC and USAC consistent with Commission precedent.[10]

[10] *See* Answer ¶ 48.

ATT-GLCC 10:

For each month since January 2011, identify the total volume of traffic terminated by GLCC to the Free Calling Parties.

OBJECTIONS: Great Lakes objects to this interrogatory because it seeks information that is not relevant to the material facts in dispute in this proceeding or necessary for resolution of the dispute. AT&T requests information related to the "total volume" of traffic terminated by Great Lakes to its conferencing customers, which includes traffic Great Lakes terminated for long-distance carriers other than AT&T. The volume of long-distance traffic Great Lakes terminated for carriers other than AT&T is not relevant to whether Great Lakes was required to provide AT&T a direct connection to its network or whether those customers are end users under the Tariff. As explained in more detail in the Answer and accompanying Legal Analysis, AT&T's allegations regarding Great Lakes' volumes relative to CenturyLink's are irrelevant to resolution of the parties' dispute and represent a collateral attack on the agency's *Connect America Fund Order*.[11] Thus, Great Lakes objects insofar as this request is not limited to the traffic relevant to AT&T. As to the total volume of traffic terminated by GLCC and billed to AT&T pursuant to tariff, AT&T already has access to this information through its own records and Great Lakes' (long overdue) CABS bills in its custody and possession.

Great Lakes further objects to this request insofar as it seeks information "since January 2011." In justifying its request, AT&T claims that it needs this information to "encompass the entire duration of the relevant dispute." As an initial matter, AT&T's definition of the "Relevant Period" for purposes of its interrogatories is "December 29, 2011 to the present, unless otherwise specified," and AT&T has offered no justification for extending the "relevant" period to cover all

[11] *See* Answer ¶¶ 53-55; Legal Analysis § I.

of 2011. Moreover, this includes a time period – 2011, and early 2012 – before Great Lakes' Tariff was filed and governed AT&T's access charges; the District Court has already held that AT&T owes Great Lakes for amounts long overdue under the parties' 2011 Agreement,[12] which AT&T refused to pay based on what the District Court held was "an absurd reading of the Agreement,"[13] much like AT&T's absurd reading of Great Lakes' TSAs with its customers, Great Lakes' Tariff, 47 C.F.R. § 61.26, et al.

AT&T has stated that it is seeking this information for purposes of comparison with the traffic volumes of CenturyLink, the price-cap ILEC with the lowest rates for switched access in Iowa, to support AT&T's arguments related to the FCC's benchmark rule governing CLECs' access tariffs. Great Lakes filed a new tariff with the FCC on January 11, 2012 (Great Lakes FCC Tariff No. 2), which became effective on January 26, 2012.[14] Before that, the parties' 2011 Agreement governed, and the Court has already resolved the amount AT&T owes Great Lakes under that Agreement.[15] Moreover, there is no point in time in which this information is relevant; as explained in its Legal Analysis and Answer, the Commission has been consistent and clear that the "**only requirement** [of the CLEC benchmark rule] is that the aggregate charge for these services, however described in their tariffs, cannot exceed our benchmark."[16] Traffic Great Lakes terminates for IXCs other than AT&T is, by definition, irrelevant here.

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12 AT&T Ex. 59.
13 AT&T Ex. 74, at 29.
14 AT&T Ex. 8.
15 AT&T Ex. 74.
16 *Seventh Report & Order* at ¶ 55.

DATED: September 15, 2016

Respectfully submitted,

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COUNSEL FOR GREAT LAKES
COMMUNICATION CORP.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(202) 457-3090

Complainant,

v. **File No. EB-16-MD-001**

GREAT LAKES COMMUNICATION CORP.
1501 35th Avenue, W
Spencer, IA 51301
(712) 580-4700

Defendant.

GREAT LAKES COMMUNICATION CORP.'S FIRST REQUEST FOR INTERROGATORIES TO AT&T CORP.

Pursuant to 47 C.F.R. § 1.729(a), Defendant Great Lakes Communication Corp. ("Great Lakes" or "GLCC") submits to the Federal Communications Commission ("FCC"), and concurrently serves on Complainant AT&T Corp. ("AT&T"), this First Request for Interrogatories. AT&T shall respond to these interrogatories in the time provided by 47 C.F.R. § 1.729, in writing, under oath, and in accordance with the Commission's rules and the Definitions and Instructions below.

INSTRUCTIONS

When responding to the interrogatories, please comply with the following instructions:

1. Answer each interrogatory separately, fully, in writing and under oath.

2. Begin the response to each interrogatory on a separate page.

3. For any interrogatory consisting of separate subparts or portions, provide a

complete response to each subpart as if the subpart were propounded separately.

4. Restate each interrogatory before providing the response or objection.

5. Specify the interrogatory in response to which any document, narrative response, or objection is provided, cross-referencing as appropriate for any document, narrative response, or objection that relates to more than one interrogatory.

6. These interrogatories are continuing in nature so as to require the filing of supplemental responses without further request should additional information, or information inconsistent with the information contained in the responses to these interrogatories, become available.

7. Provide all information related to answering the interrogatory that is in your possession, custody, or control and not privileged, regardless of whether such knowledge, information, or documents is possessed directly by you or by your employees, officers, directors, agents, representatives, attorneys, consultants, or any other person or entity acting or purporting to act on your behalf.

8. In lieu of providing requested information or documents that were Previously Provided to Great Lakes in the underlying litigation, identify when and how such information and documents were previously provided to Great Lakes.

9. Produce any documents in the form of legible, complete, and true copies of the Original document as defined herein.

10. Provide all documents in their native format, together with all metadata.

11. Where the name of a person or entity is requested, indicate the full name, business firm, business and home address, business and home telephone number, and e-mail, if applicable.

12. Unless otherwise indicated, these interrogatories refer to the time, place and

circumstances and occurrences mentioned or complained of in this Formal Complaint proceeding.

13. If you object to any request on grounds of attorney-client privilege or work product protection, specifically identify any documents withheld from production by author(s), addressee(s), length, and date, with a brief description of the subject matter or nature of the document and a statement of the privilege asserted.

14. If you contend that any part of your response to an interrogatory contains trade secrets or other proprietary or confidential business or personal information, such contention shall not provide a basis for refusing to respond within the time period required by the Commission's rules. You shall respond according to and under the terms of 47 C.F.R. § 1.731.

15. If you contend that a particular interrogatory, or a Definition or an Instruction applicable thereto, is ambiguous, such claim shall not provide a basis for refusing to respond. Please set forth the allegedly ambiguous language and the interpretation of that language that you have adopted in responding to that interrogatory.

16. The present tense shall be read to include the past tense, and the past tense shall be read to include the present tense.

17. The use of the singular form of any word includes the plural and the use of the plural form includes the singular.

18. The use of the conjunctive shall be read to include the disjunctive, and the use of the disjunctive shall be read to include the conjunctive.

19. Any reference to a corporation, partnership, association, person or other entity shall also include, where applicable, subsidiaries, officers, directors, employees, attorneys,

accountants, agents or other representatives.

20. If you assert that documents or information related to answering an interrogatory are unavailable or have been discarded or destroyed, state when and explain in detail why any such document or information was unavailable, discarded, or destroyed, and identify the person directing the discarding or destruction. If a claim is made that the discarding or destruction occurred pursuant to a discarding or destruction program, identify and produce the criteria, policy, or procedure under which such program was undertaken.

21. If any interrogatory cannot be answered in full after reasonable inquiry, provide the response to the extent available, state why the interrogatory cannot be answered in full, and provide any information within your knowledge concerning the description, existence, availability, and custody of any unanswered questions.

22. These interrogatories cover the period from January 1, 2012 to the present, unless otherwise indicated.

DEFINITIONS

1. "Access stimulation" means a practice engaged in by a local exchange carrier that meets the FCC's definition set forth at 47 C.F.R. § 61.3(bbb).

2. "Any" means each, every, and all persons, places, or things to which the term refers.

3. "CenturyLink" means Qwest Corporation d/b/a CenturyLink QC.

4. "Communication" means any meeting, statement, document, conversation, transmittal of or request for information, whether by written, oral, pictorial, electronic or other means.

5. "Copy" means any reproduction, in whole or in part, of an original document

and includes, but is not limited to, non-identical copies made from copies.

6. "Describe" and "description" means to set forth fully, in detail, and unambiguously any fact of which you have knowledge related to answering the interrogatory.

7. "Direct connect" or "direct connection arrangement" means a direct interconnection between the networks of two telecommunications carriers, including how you have used that term in your Formal Complaint.

8. "Document" is used in the broadest sense possible to include, without limitation, any written, drawn, recorded, transcribed, filed, or graphic matter, including scientific or researchers' notebooks, raw data, calculations, information stored in computers, computer programs, surveys, tests, and test results, however produced or reproduced. With respect to any document that is not exactly identical to another document for any reason, including but not limited to marginal notations, deletions, redrafts, or rewrites, the separate documents shall be provided.

9. "Great Lakes" or "GLCC" means Great Lakes Communication Corp., the Defendant in this Formal Complaint proceeding.

10. "Identify," "identity," or "identification," (1) when used in reference to a natural person means that person's full name, present or last known home address and telephone number; present or last known business affiliation, address, job title, and telephone number; and the nature of the relationship or association of such person to you; (2) when used in reference to a person other than a natural person, means that person's full name, a description of the nature of the person (that is, whether it is a corporation, partnership, etc. under the definition of a person below), and the person's last known address, telephone number and principal place of business; (3) when used in reference to any persons after the

person has been properly identified previously means the person's name; and (4) when used in reference to a document, requires you to state the date, the author (or, if different, the signer or signers), the addressee, the identity of the present custodian of the document, and the type of document (e.g., letter, memorandum, telegram, or chart) or to attach an accurate copy of the document to your response, appropriately labeled to correspond to the interrogatory.

11. "Including" means including but not limited to.

12. "INS" means Iowa Network Services.

13. "Local Exchange Provider" or "LEC" means a local exchange carrier that provides telephone exchange and/or exchange access service, whether designated as an Incumbent Local Exchange Carrier ("ILEC") or a Competitive Local Exchange Carrier ("CLEC").

14. "Original" means the first archetypal document produced, that is, the document itself and not a copy.

15. "Person," "persons," or "people" means all entities, including without limitation, any natural person, firm, association, partnership, corporation, limited liability company, organization, business, receiver, real estate licensee, mortgage company, broker or other form of legal or equitable entity, such as trusts, joint ventures, estates, and agencies or governmental entities, including the parties to this suit and their officers, directors, partners, agents, contractors, subcontractors, employees, representatives and affiliates.

16. "Previously Provided" means those documents that were (i) provided in the Underlying Litigation (ii) without restriction as to their use in this Formal Complaint proceeding.

17. "Relate to," "relating to," "reflect," or "reflecting," "refer" or "referring to" as

used herein, shall be interpreted in its broadest sense possible to include anything within the permissible scope of discovery under the Commission's Rules and shall include and contemplate the following terms or phrases: analyze, comment on, concern, concerning, connect, constitute, contain, contradict, deal with, describe, discuss, embody, evaluate, evidence, identify, note, mention, pertain to, record, respect, support, refer to, is relevant to, respond to, state, study, or is any way pertinent to the subject matter of the inquiry, including documents concerning the presentation of other documents.

18. "Underlying litigation" means any and all proceedings in *Great Lakes Commc'ns Corp. v. AT&T Corp.*, No. 13-4117 (N.D. Iowa).

19. "Wholesale" refers to the long distance telecommunications traffic that you carry where you were not selected as the Primary Interexchange Carrier ("PIC") by the end user, including, without limitation, all long distance traffic you receive from other carriers through least cost routing arrangements (including wireless carriers who choose to route their end users' traffic to you without the independent selection or participation of the end user) and VoIP providers.

20. "You," "your" and "AT&T" mean AT&T Corp., the Complainant in this Formal Complaint proceeding, and includes its subsidiaries and/or affiliates, and anyone acting on its behalf, including, but not limited to, any and all predecessors or successors in interest, officers, directors, employees, agents, members, consultants, attorneys and all other persons acting or purporting to act on its behalf or under its control.

INTERROGATORIES

GLCC-ATT 1:

Identify all engineering, network-planning, technical and financial aspects of any "direct connect" service relating to Great Lakes that you investigated, studied, analyzed or discussed from September 1, 2011 through June 26, 2015, and produce all documents evidencing such investigations, studies, analyses, or communications, including, without limitation, all internal communications and communications with third parties relating to the carriage of AT&T's Great Lakes-related traffic, including the feasibility of any such proposal and the technical (including the format in which the traffic would be carried, whether in IP or TDM and how such interconnection would be provisioned), and financial details of any such service. Such information and documents includes, but is not limited to, the CenturyLink "service" modeled in AT&T Compl. Ex. 91.

Explanation

AT&T complains that Great Lakes has "refused to offer" it a "direct connection arrangement." AT&T Compl. ¶ 55. As Great Lakes has shown in its Answering Submission, AT&T has never articulated to Great Lakes either the financial or the technical terms under which AT&T would implement such an arrangement. In fact, there is presently no evidence in the record that, at any point in time in which it made a request for a direct connect, AT&T had the necessary capacity, or the intent or means to acquire such capacity, to establish a direct connection with Great Lakes' end office. Therefore, if AT&T was not willing or able to install a direct connect when it requested it, then AT&T has not been harmed. Moreover, as explained in the Declaration of Mr. Starkey, AT&T's "savings" calculation appears unrealistic and ignores the realities that AT&T would confirm if it independently carried its traffic to rural Iowa instead of utilizing the INS network. These realities, while ignored by AT&T, would have significantly impacted any purported savings. As such, AT&T should prove that any "savings" could, in fact, have been realized, and if so, to what extent.

This information is not available to Great Lakes through a source other than AT&T. To the extent the information exists, it is known by AT&T and not the type of information that is

typically made available publicly. Alternatively, if the information does not exist, the absence of such information is relevant to establishing that AT&T's requests for a direct connect were, in reality, a sham negotiating tactic aimed at getting Great Lakes to provide AT&T with service at a below-market value. Again, Great Lakes has asked for this information through their negotiations, and AT&T has failed to provide it.

GLCC-ATT 2:

Identify all carriers that AT&T has asked to carry, and all carriers that have offered to carry, Great Lakes-bound traffic for AT&T from January 1, 2012 to present, and for each such instance state the date and material terms under which AT&T requested, or the carrier offered, to carry such traffic, and produce all communications relating to each such instance.

Explanation

AT&T claims that by "failing to offer a direct connection arrangement" to AT&T, Great Lakes "has forced AT&T (and therefore its customers) to pay significant amounts for INS's service." AT&T Compl. 59. As Great Lakes notes in its Answering Submission, it has commercial arrangements with various carriers who deliver traffic directly to Great Lakes for termination. Great Lakes believes that at least some of those carriers have offered to carry AT&T's Great Lakes-bound traffic, but AT&T has refused those options, despite complaining to the Commission that Great Lakes has "forced" AT&T to use INS. Great Lakes wishes to establish that fact with evidence from AT&T, the best source for such information. Moreover, AT&T has modeled CenturyLink's direct-trunked transport service under certain circumstances, and Great Lakes is entitled to know the extent to which AT&T and CenturyLink negotiated and discussed the terms of any such service by CenturyLink.

This information is not available to Great Lakes through a source other than AT&T, and since it is AT&T's burden to prove its allegation that Great Lakes "forced" AT&T to use INS's service, it should prove it. To the extent it exists, it is known by AT&T and not the type of information that is typically made available publicly.

GLCC-ATT 3:

With respect to your allegations that "excess revenues shared in access stimulation schemes such as these are ultimately passed on to unwitting customers," Compl. ¶ 42 n.91, and that Great Lakes has "forced" AT&T's "customers" to pay for INS's "expensive services," Compl. ¶ 59, identify all business records, including, without limitation, customer invoices and payments, and communications relating thereto, showing that AT&T has in fact "ultimately passed on to unwitting consumers" the costs associated with Great Lakes' traffic, including your payments to INS. Specifically identify all instances in which you raised the price or otherwise adjusted the terms of any of your services to any customer because of such costs and whether you reduced the charges to your customers as a direct result of the FCC's price reductions for access stimulation in the *Connect America Fund Order*.

Explanation

While Great Lakes has discovered no public evidence that AT&T has raised its prices because of access stimulation generally or Great Lakes' traffic specifically, and has seen no evidence of that in discovery in this action, despite requesting it from AT&T. AT&T repeatedly makes this and similar claims, notwithstanding the fact that, as this and the *INS* cases illustrate, AT&T engages in self-help and does not pay the "costs" that allegedly are passed on to consumers. AT&T should prove its own allegations.

This information is not available to Great Lakes through a source other than AT&T, and since it is AT&T's burden to prove its allegation that Great Lakes "forced" AT&T to use INS's service, and that AT&T consequently forced its customers to pay these charges, it should prove it. To the extent it exists, it is known by AT&T and not the type of information that is typically made available publicly.

GLCC-ATT 4:

With respect to the [BEGIN CONFIDENTIAL] [redacted] **[END CONFIDENTIAL] identify the people or person responsible for preparing and overseeing this policy, and identify all reasons why AT&T Corp., an independent long distance carrier, chooses not to pursue opportunities that would avoid the per-minute pricing in the [BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

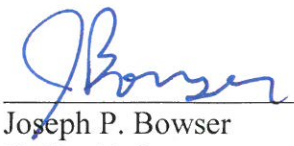
Explanation

AT&T alleges that for "high access traffic volumes, carriers in many cases implement a direct connection arrangement because its flat-rate (rather than per-minute) pricing usually offers the most efficient, least costly way to route large volumes of traffic to a LEC." Compl. ¶ 52; *see also* Habiak Dec. ¶ 5 (describing AT&T's policy in more detail). AT&T faults Great Lakes for not providing a "direct connection," but by its own policy does not pursue those "opportunities" in states where its **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** provide service. If the point of the policy is to save money, as AT&T claims, the reasons it would purposefully omit **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** – are not self-evident, and would appear to defeat the stated purpose of saving money.

This information is not available to Great Lakes through a source other than AT&T, and since it is AT&T's burden to prove its allegations that Great Lakes is the source of its "harm," and that this is indeed a "harm" that AT&T does not freely accept in **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**, it should prove it. To the extent it exists, it is known by AT&T and not the type of information that is typically made available publicly.

DATED: September 15, 2016

Respectfully submitted,



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